TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 193.

Chas. M. Terrell, Adm'r, &c., et al.

vs.

[redacted] AND EDWARD COSGRAVE, APPELLANTS,

vs.

TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED; MARIE GARRAU, W. M. RUSSELL, AND S. F. COOMBS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED FEBRUARY 25, 1904.

(19,244.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 193.

HANNAH O'CALLAGHAN AND EDWARD CORCORAN, APPELLANTS,

vs.

TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED; MARIE CARRAU, W. M. RUSSELL, AND S. F. COOMBS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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a *Transcript of Record.*

United States Circuit Court of Appeals for the Ninth Circuit.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as JOHANNA Callaghan, and Edward Corcoran, Appellees. } No. 925.

Upon appeal from the United States circuit court for the district of Washington, northern division.

1 In the United States Circuit Court of Appeals for the Ninth District.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLIGHAN, Otherwise Known as JOHANNA Calligham, and Edward Corcoran, Appellees. } No. 925.

Notice as to Printing of Record.

To the above-named appellees and their attorneys, Files, Donworth & Howe:

You will hereby take notice that the transcript and record complete in the above-entitled cause appealed from the circuit court of the United States, for the district of Washington, northern division, has been filed and docketed in the above-entitled court at San Francisco, California, as cause number 925.

And you are further notified that the appellant deems it necessary to print the whole of said record, certified by the clerk of said circuit court, for the consideration thereof on such appeal, except the various "titles of the court and cause," which appellant deems unnecessary to be printed for the consideration thereof, but that in lieu of the various titles of the court and cause con-
2 tained in said record, appellant deems it necessary to print only and in lieu thereof the phrase, "Title of court and cause."

And also to omit from said printed record the endorsements contained in all pleadings and masters' reports and exhibits, etc., up to the filing and allowance of the petition for the appeal, and in lieu of such endorsements, to print only the phrase "Duly filed [giving the date of filing]."

And further, that appellant deems it necessary that the endorsements contained on all filings, beginning with the petition for an allowance of the appeal to the completion of the record so far as perfecting the appeal is concerned be printed in full.

And the appellant further deems it unnecessary for the consideration of this appeal to print the "four original photographic exhibits" which were sent up by order of the court as original exhibits, and that such exhibits be omitted from the printed record.

And you are further given notice that this statement has been filed with the clerk of the above-entitled court, under rule 23 of the rules of the United States circuit court of appeals, for the ninth circuit.

J. W. ROBINSON,
Of Attorneys for Appellant.

[Endorsed:] No. 925. United States circuit court of appeals. Marie Carrau *vs.* Hannah O'Callighan *et al.* Statement under rule 23. Filed January 2, 1903. F. D. Monckton, clerk.

3 In the United States Circuit Court of Appeals for the Ninth District.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as JOANNA Callaghan, and Edward Corcoran, Appellees. } No. 925.

Stipulation as to Printing of Record.

Counsel for Hannah O'Callaghan and Edward Corcoran, without waiving the special appearance for the purpose of dismissing the appeal in the above-entitled suit, but reserving unto themselves the right to object to the jurisdiction of the United States circuit court of appeals for the ninth circuit, of this action, on appeal, and without submitting to the jurisdiction of said court in said action, but hereby reserving the right to raise any and all manner of objections and exceptions to any irregularities or omissions or want of jurisdiction, either as to the appeal or as to the supersedeas herein, and upon these conditions only, hereby stipulate under rule 23 of the rules of the United States circuit court of appeals for the ninth circuit, that the statement hereto attached with reference to the printing of the record may govern the clerk in printing said record, and wherever in said record there occurs the title of the court and cause,
4 said clerk may print in lieu thereof "Title of court and cause," and in lieu of the endorsements in full, print "Duly filed [giving date]." And also that the four original photographic exhibits be omitted from said printed record.

Dated at Seattle, December 31st, 1902.

PILES, DONWORTH & HOWE,
Solicitors for Parties Named.

[Endorsed:] No. 925. United States circuit court of appeals, for the ninth circuit. Marie Carrau, appellant, *vs.* Hannah O'Callaghan, otherwise known as Johanna Callaghan, and Edward Corcoran, appellees. Stipulation under rule 23. Filed January 7, 1903. F. D. Monckton, clerk.

In the Circuit Court of the United States for the District of Washington, Northern Division.

HANNA CALLIGAN and EDWARD CORCORAN, Complainants and Appellees,
vs.
TERRENCE O'BRIEN ET AL., Respondents, and MARIE CARRAU, Appellant.

Order Extending Time to Docket Cause.

Now, on this October 9th, 1902, it appearing to the court
5 that the record of this action on appeal to the United States circuit court of appeals cannot be prepared and certified within the time required by the citation, to wit, October 13th, 1902, and it appearing to the court that this appeal cannot be heard before the February term 1903; and, upon application of J. W. Robinson, one of the solicitors for the appellant, and the court being advised, it is now ordered that the time be extended until the 30th day of December, 1902 in which to prepare and certify said record.

Dated October 9th, 1902.

C. H. HANFORD, *Judge.*

[Endorsed:] No. 943. United States circuit court, district of Washington, northern division. Hanna Calligan *et al. vs.* Terrence O'Brien *et al.* Filed in the United States circuit court, district of Washington, October 10, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Endorsed:] No. 925. United States circuit court of appeals for the ninth circuit. Marie Carrau *vs.* Hannah O'Callaghan, etc., *et al.* Order extending time to docket cause. Filed December 15th, 1902. F. D. Monckton, clerk.

6 In the Circuit Court of the United States for the District of Washington, Northern Division, Ninth Circuit. In Equity.

HANNAH O'CALLIGAN and EDWARD CORCORAN, Complainants,
vs.
TERRENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants. } No. 943.

Bill of Complaint.

To the honorable judges of the circuit court of the United States for the ninth circuit, district of Washington, northern division:

Hannah Calligan and Edward Corcoran, aliens and subjects of the King of the Kingdom of Great Britain and Ireland, complainants, bring this their bill of complaint against Terrence O'Brien, a citizen of the United States, and a citizen and resident of the State of Washington, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, a citizen of the United States, and a citizen and resident of the State of Washington, and thereupon your orators complain, allege and say:

7 1. Your orators show unto your honors that each of your orators is an alien, to wit, a subject of the King of the Kingdom of Great Britain and Ireland, and that Hannah Calligan is a resident of the city of Cork, Ireland, and the said Edward Corcoran is a resident of the city of Dublin, Ireland.

2. Your orators show unto your honors that the defendant, Terrence O'Brien, is a citizen of the United States, and a citizen and resident of the State of Washington, and he is and since the — day of November, 1900, has been duly appointed, qualified and acting administrator of the estate of John Sullivan, deceased, said O'Brien having been appointed as such administrator by the superior court of King county, State of Washington.

3. Your orators further show unto your honors that the defendant Marie Carrau is a citizen of the United States, and a citizen and resident of the State of Washington.

4. Your orators further show unto your honors that on the 26th day of September, 1900, John Sullivan died in the city of Seattle, State of Washington, intestate, leaving a large amount of real and personal property, said real property then and now being of the value of about four hundred thousand dollars ($400,000.00), and upwards, and said personal property then and now being of the value of upwards of twenty thousand dollars ($20,000.00); that said real estate was and is producing an annual income of about twenty-

8 five thousand dollars ($25,000.00), and will continue to produce said sum in the future. That said John Sullivan left surviving him no widow, child or lneal descendent, nor

father, mother, sister, brother, uncle, aunt, nephew, niece nor any granduncle nor grandaunt, nor any grand nephew or grandniece, nor any ancestor, lineal or collateral, nor any first cousins other than your orators, nor any relative whomsoever, as nearly related to him as your orators.

5. Your orators further show unto your honors that your orators are the only heirs at law and next of kin of the said John Sullivan, deceased, and that each of them is a first cousin of said John Sullivan, deceased.

6. Your orators further show unto your honors that the said John Sullivan was born in Ireland, and resided with his parents for many years in the city of Cork; that he left the city of Cork many years ago and sailed for the United States of America; he was shipwrecked on the Pacific coast, and arrived in Seattle about the year —; at which place he continued to reside until the time of his death, at which time, and for many years prior thereto, he was a citizen of the United States and of the State of Washington.

7. Your orators further show unto your honors that shortly after the death of the said John Sullivan, special administrator of his estate was appointed by the superior court of King county, State of Washington, which special administrator took charge of the estate of said John Sullivan, deceased, and held the same until the — day of November, 1900, at which date said Terrence O'Brien was by said superior court of King county Washington, duly appointed
9 general administrator of said estate, and said Terrence O'Brien immediately qualified as such administrator, entered upon the discharge of his duties as such, and ever since his said qualification he has been and he is now, the duly qualified and acting administrator of the estate of said John Sullivan, deceased.

8. Your orators further show unto your honors that Marie Carrau and Louis Daussat, the said Louis Daussat being a near relative of said Marie Carrau, shortly after the appointment of said special administrator of said estate by said superior court of King county, State of Washington, filed their petition in said superior court of King county, State of Washington, wherein they allege that the said John Sullivan died in King county, without leaving any will, and seised of an estate in said King county, consisting of real and personal property exceeding in value the sum of four hundred thousand dollars ($400,000.00); and said Louis Daussat and Marie Carrau claimed that said John Sullivan was indebted to said Louis Daussat and Marie Carrau in a small amount, to wit, about thirty-five dollars ($35.00) for board, and as such creditors they prayed that I. D. McCutcheon, Esq., should be appointed administrator of said estate.

9. Your orators further show unto your honors that other persons, to wit, Bonney & Stewart, the United States Mortgage Company, and others, filed petitions alleging that said John Sullivan died, seised and possessed of real and personal property in King county; that he left no will; and prayed the appointment of
10 other persons than the said I. D. McCutcheon as administrator of said estate.

10. Your orators further show unto your honors that said several petitions were brought on for hearing in said superior court of King county, State of Washington, and at said hearing, the said I. D. McCutcheon declined said appointment as administrator of said estate, and at the request and in the behalf of said Louis Daussat and Marie Carrau requested the appointment of one B. R. Brierly, as administrator of said estate, in lieu of said I. D. McCutcheon.

11. Your orators further show unto your honors that upon the hearing of the proofs offered in support of said petitions, and each of them, the said superior court of King county, State of Washington, appointed the said Terrence O'Brien, as administrator of said estate, and denied the prayers of each and every person praying for the appointment of any other person than the said Terrence O'Brien.

12. Your orators further show unto your honors that after the said Terrence O'Brien had been appointed, and had qualified as administrator of said estate, the said Marie Carrau, the said Louis Daussat, and Augustine Daussat and Hermance Carrau (the last two named persons being relatives of said Marie Carrau and Louis Daussat) combined and confederated together for the purpose of manufacturing a pretended nuncupative will of the said John Sullivan, in favor of the said Marie Carrau, under which said pretended nuncupative will the said Marie Carrau is claiming to be the
11 sole legatee and devisee of all the property of said John Sullivan deceased; and it is and has been the intention of the said Marie Carrau, Hermance Carrau, Louis Daussat, and Augustine Daussat, to carry out said conspiracy, and thereby obtain for themselves all of the property of the said John Sullivan, deceased, by means of false testimony, and by the manufacture of evidence to support said pretended nuncupative will.

13. Your orators further show unto your honors that the said John Sullivan, at the time of his death was a bachelor of the age of sixty years, and had had only a very short acquaintance with said Marie Carrau, Hermance Carrau, Louis Daussat and Augustine Daussat, or either of them, but at the time of his death he was temporarily lodging at the house of the said Daussat, at which house the said Marie Carrau also resided, and at said time said Marie Carrau was teaching the said John Sullivan French, the said John Sullivan then contemplating taking a trip to France, and there spending a long time, from which country he had recently returned with the intention of revisiting it at an early date.

14. Your orators further show unto your honors that after failing to procure the appointment of the person whom they had nominated as administrator, the said Louis Daussat and Marie Carrau began to circulate reports that the said John Sullivan, deceased, had made a nuncupative will, that said pretended will had been made by the said John Sullivan at eleven o'clock on the night of the
12 25th day of September, 1900; that said pretended nuncupative will had been reduced to writing at half-past eleven

o'clock on the night of said 25th of September, and had been signed by the said Marie Carrau, Louis Daussat, Augustine Daussat, and Hermance Carrau as witnesses, after the death of said John Sullivan on the 26th day of September, 1900.

15. Your orators further show unto your honors that on the 8th day of March, 1901, the said Marie Carrau filed in the superior court of King county, State of Washington, her petition, verified by her, wherein she stated that she had heard said petition read, knew the contents thereof, and knew the same to be true, which said petition alleged:

"That said John Sullivan died on the 26th day of September, A. D. 1900, at Seattle, county of King, State of Washington, and was at the time of his death of sound mind and disposing memory; that he left a last will and testament, to wit, a nuncupative will; that six months had not elapsed since the testamentary words were spoken by decedent; that said testamentary words, or the substance thereof, were addressed to Louis Daussat, Augustine Daussat and Hermance Carrau at about eleven o'clock p. m. of the 25th day of September, 1900, and were as follows: 'I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick, and we know not what might happen'; that said testamentary words were thereafter reduced to writing, which said writing accompanies this petition; that such

13 testamentary words were spoken and such nuncupative will was made at the time of the last sickness and at the dwelling-house of deceased, wherein deceased had resided for more than ten days immediately preceding his death, and the speaking of said words; that said will was made at about the hour of eleven o'clock p. m. on the 25th day of September, 1900, the night before decedent's death, and at the time of his last sickness, and while decedent was in actual contemplation, expectation and fear of death, and at the time of pronouncing said testamentary words, constituting such nuncupative will as aforesaid, the decedent did bid the three following named persons, who were then and there present, by and at his request, to bear witness that such was his will, to wit: Louis Daussat, Augustine Daussat, Hermance Carrau; that decedent had been sick for several days immediately preceding the making of said will, and was still sick at said time, and in his last sickness as aforesaid, and died within twelve hours after said will was made, published and declared; that no one was named in said will as the executor thereof; that decedent was a bachelor and left no widow, heirs, or next of kin, so far as known to your petitioner; that deceased left personal property of the value of fifty thousand dollars ($50,000) and real estate in said county of King of the probable value of four hundred and fifty thousand dollars ($450,000).

Wherefore, petitioner prays that said will be admitted to probate.

MARIE CARRAU,
Proponer and Petitioner."

14 16. Your orators further show unto your honors that immediately upon the filing of said petition a citation was issued by order of the superior court of King county, State of Washington, and placed in the hands of the sheriff of said King county for service upon the widow and next of kin of said John Sullivan, deceased, and that said sheriff immediately returned said citation with his return thereon that he was unable to find said persons or any of them in King county, and immediately thereupon the superior court of King county, State of Washington, assumed to admit said pretended nuncupative will to probate, and said pretended nuncupative will now stands as though legally probated in the records of the superior court of King county, State of Washington.

17. Your orators further show unto your honors that the said superior court, in assuming to probate said nuncupative will, acted wholly without jurisdiction in the premises; that said superior court of King county was without jurisdiction to hear any evidence or to take any steps for the probate of the nuncupative will wherein the estate bequeathed exceeded the value of two hundred dollars, the said superior court of King county, State of Washington, was also without jurisdiction to hear any proof offered for the probate of said pretended nuncupative will, for the reason that no legal citations had been issued out of said court, and because ten days had not elapsed between the filing of said pretended will and the hearing of the pretended proof offered in support of the same.

15 18. Your orators further show unto your honors that under the laws of the State of Washington a nuncupative will is invalid where the estate bequeathed exceeds the value of two hundred dollars, and a nuncupative will, even if valid, cannot dispose of real estate.

19. Your orators further show unto your honors that the said Marie Carrau has filed her petition in the superior court of King county, State of Washington, wherein she prays that the estate of the said John Sullivan and the whole thereof, including both the real and personal property of said estate, be distributed to her, and your orators are informed and believe and upon information aver that the superior court of King county, State of Washington, will on the 21st day of June, 1901, make and enter a decree of distribution of said estate, distributing said estate and the whole thereof to the said Marie Carrau, upon the said Marie Carrau executing a bond for the payment of her proportion of the indebtedness of said estate. Said estate is very slightly indebted, except that it is indebted in the sum of sixty thousand dollars to the United States Mortgage and Trust Company, which said sum is secured by mortgage of property in the city of Seattle, State of Washington, known as the Sullivan building, which, with the land upon which it is situated, is of the value of upwards of three hundred thousand dollars, and said administrator, unless enjoined by this court, will surrender to said Marie Carrau all of said estate, including said real estate,

16 and the said Marie Carrau appropriate to her own use and benefit all of the rents, issues and profits thereof, which amount

to the sum of about twenty-five thousand dollars a year, and said rent, issues and profits will be wholly lost to your orators and to each of them, because the said Marie Carrau is wholly insolvent.

20. Your orators further show unto your honors that even if the pretended probate of said alleged nuncupative will be allowed to stand, said pretended nuncupative will is invalid, for the reasons heretofore set forth, and your orators as the sole heirs at law of the said John Sullivan, deceased, are entitled to his estate and to the whole thereof, and should said pretended nuncupative will be held valid, your orators are, as such heirs at law, entitled to all of the real estate of the said John Sullivan, deceased, and to all the rents, issues and profits, issuing out of said real estate since the death of the said John Sullivan, deceased.

21. Your orators further show unto your honors that said superior court of King county, State of Washington, is wholly without jurisdiction to distribute said real estate or any part thereof, or any of the rents, issues or profits issuing out of said real estate since the death of said John Sullivan, deceased, and is wholly without jurisdiction, in the exercise of probate jurisdiction, to in any manner interfere with or exercise any control over said real estate, or said rents, issues and profits thereof; that said real estate and said rents, issues and profits are the property of your orators and each of them, and that if said superior court of King
17 county, State of Washington, makes an order directing said administrator to surrender said real estate to said Marie Carrau, the said administrator will surrender said real estate and said rents, issues and profits to said Marie Carrau, and the said order of said superior court and the action of said administrator in obedience to said order, will deprive your orators and each of them of their said property without due process of law, in violation of the rights of your orators and each of them under the fourteenth amendment of the Constitution of the United States.

22. Your orators further show unto your honors, that in order to protect the rights of your orators in the said estate and in said real estate and the rents, issues and profits thereof, it is necessary that a receiver of said real estate and of said rents, issues and profits be appointed, and that the said Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, be restrained and enjoined from surrendering possession thereof or any part thereof, and all moneys and other personal property of said estate, to the said Marie Carrau, and that the said Marie Carrau be enjoined and restrained from receiving possession of the same or any part thereof, or in any manner interfering with the same or any part thereof, during the pendency of this suit, and until this suit be fully and finally determined.

23. Your orators further show unto your honors that unless said defendant administrator is restrained from turning over said property, both real and personal, to said Marie Carrau, and unless
18 said Marie Carrau is restrained from receiving the same, the said administrator will turn over and pay over to the said

Marie Carrau all of the personal property of said estate, and will deliver the whole of the real estate of said estate to Marie Carrau, and she will receive the same, and that such payment and delivery will be made before your orators can apply for a temporary injunction to restrain said administrator and said Marie Carrau from so acting; that an emergency exists for the granting of a restraining order restraining said defendants and each of them from taking any action in said matter until the application of your orators for a temporary injunction restraining said defendants from acting in said matter can be heard.

24. Your orators further show unto your honors that the matter in dispute in this suit exceeds the sum and value of two thousand dollars exclusive of interest and costs; that your orators have not nor has either of them any plain or adequate remedy at law; that if said Marie Carrau receives possession of any part of said estate she will transfer the same to various persons and will render it necessary for your orators to institute a multiplicity of suits against such persons to protect the rights of your orators in such property.

In consideration whereof, and for as much as your orators are remediless in the premises at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this kind are properly recognizable and relievable.

Your orators therefore pray the aid of this honorable court
19 that a decree may be rendered and entered, adjudging and decreeing, that the said pretended nuncupative will, under which the said Marie Carrau claims to be a legatee be adjudged null and void, and of no force and effect whatsoever, and in the event that said will should not be adjudged null and void, the same should be adjudged not to pass title to any real estate of the estate of John Sullivan, deceased, nor any of the rents, issues and profits issuing out of said real estate since the death of the said John Sullivan, deceased.

And your orators further pray that upon the final hearing and termination of this action, the said Marie Carrau be perpetually restrained and enjoined from setting up any title or claim under said pretended will.

And your orators further pray that pending the final hearing of this suit the defendant Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, be enjoined and restrained from turning over any of the property and from paying over any of the moneys of the estate of John Sullivan, deceased, to said Marie Carrau, or to any other person or persons than your orators, and that pending the determination of this suit, the defendant Marie Carrau be enjoined and restrained from in any manner interfering with any of the property of said estate, and from receiving possession of any part of said property.

And your orators further pray that a restraining order issue out of this honorable court, restraining the said Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, from turning

over any of the property of said estate and paying over any
20 of the moneys of said estate to said Marie Carrau prior to the hearing of your orators' application for a temporary injunction, and that during the same time the said Marie Carrau be restrained from receiving any of the property of said estate.

And your orators further pray that upon the final hearing and determination of this suit, your orators be adjudged and decreed to be the only heirs at law of the said John Sullivan, deceased, and entitled to receive his estate and the whole thereof, and that said defendant administrator surrender possession thereof to them and account to them therefor.

And your orators further pray that during the pendency of this suit a receiver of all the property of the estate of John Sullivan, deceased, be appointed to take charge of and conserve the same until the final determination of this suit, and that your orators may have such other and further relief in the premises as the nature of the circumstances of this suit may require, and as to this honorable court may seem meet.

And may it please your honors to grant to your orators a subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to said Terrence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, the defendants, respectively, therein and thereby commanding them on a certain day therein to be named and under a certain penalty, to be and appear before this honorable court, then and there to answer, but not under oath, all and singular the premises, and to
21 stand to and conform and abide by such order, direction and decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good conscience.

And your orators, as in duty bound, will ever pray, etc.

PILES, DONWORTH & HOWE,
Solicitors for Complainant-.
C. H. FARRELL, *Of Counsel.*

[Duly filed June 20, 1901.]

[Title of Court and Cause.]

Præcipe for Appearance for Complainants.

To the clerk of the above-entitled court:

You will please enter our appearance as solicitors for complainants in the above-entitled cause, and you will also please issue for each of said defendants a subpœna requiring each of them to appear and answer the bill of complaint.

June 20th 1901.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors for Complainants.

[Duly filed June 20, 1901.]

22 *Subpœna ad Respondendum.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, District of Washington. In Equity.

The President of the United States to Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, Greeting:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court room in Seattle on the 5th day of August A. D. 1901, to answer a bill of complaint exhibited against you in said court by Hannah O'Calligan and Edward Corcoran, who are citizens of the Kingdom of Great Britain and Ireland, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 20th day of June in the year of our Lord one thousand nine hundred and one and of our Independence the 125th.

[SEAL U. S. C. C.]

A. REEVES AYRES, *Clerk*,
By H. M. WALTHEW,
Deputy Clerk.

23 *Memorandum Pursuant to Rule* 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the above suit, on or before the first Monday of August next at the clerk's office of said court pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

A. REEVES AYRES, *Clerk*,
By H. M. WALTHEW,
Deputy Clerk.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF WASHINGTON.

I hereby certify that I received the within writ on the 20th day of June, 1901, and personally served the same on the 20th day of June, 1901, by delivering to and leaving with Terrence O'Brien personally, and upon Marie Carrau by delivering to and leaving with Mrs. Augustine Daussat, sister of Marie Carrau, at her usual place of abode, 1417 Seventh street, she being a person of suitable

age and discretion, then resident therein, said defendants named therein, at Seattle, county of King, in said district, an attached copy thereof.

June 20, 1901.

C. W. IDE,
United States Marshal,
By JOHN STRINGER, *Deputy.*

[Duly filed June 22, 1901.]

24 [Title of Court and Cause.]

Motion to Abate Action.

Comes now the respondent Marie Carrau and especially appearing herein for the purpose of the following motion and none other, to wit:

That said action abate, upon the ground and for the reason that there is another action pending between the same parties and involving the same subject matter, to wit, in the State superior court of the State of Washington, King county.

Second. For the reason that this court has no jurisdiction of the subject matter of this action.

This motion is based upon the affidavit of W. F. Hays hereto attached, and the records and files in this action.

W. F. HAYS AND
J. P. HOUSER,
Attorney- for Respondent.

STATE OF WASHINGTON, } ss:
County of King, }

W. F. Hays, the undersigned, being first duly sworn, on oath deposes and says that he is one of the attorneys for the respondent Marie Carrau; that this action and proceeding is in the nature of a contest of a will heretofore probated in the superior court of King county, Washington, in the matter of the estate of John Sullivan, deceased, by the terms of which will said Marie Carrau was decreed the sole devisee and legatee of the estate of the said John Sullivan, deceased.

25 Affiant further says that heretofore to wit, on or about the 2d day of June, 1901, the petitioners herein filed in said superior court of King county, Washington, their petition in contest of said will and which is referred to in the so-called bill of equity in the above-entitled court, and by subpœna of this court said respondent is required to appear before said within named court on or before the 5th day of August, 1901. That the proceeding is between the same parties, and involves the same identical subject matter, to wit, a pretended contest of the aforesaid will.

Affiant says that said contest filed on the 2d day of June, 1901, in the superior court of King county, Washington, and in the probate department thereof, is still pending undisposed of and was at the time of the commencement of this action.

W. F. HAYS.

Subscribed and sworn to before me this 6th day of August, 1901.

[NOTARIAL SEAL.] NELSON MacPHERSON,
Notary Public in and for the State of Washington, Residing in Seattle.

Copy of within motion and affidavit rece-ved and due service of same acknowledged this 6th day of August 1901.

——— ———,
Attorneys for Complainants.

[Duly filed August 6, 1901.]

26 [Title of Court and Cause.]

Motion for Cost Bond.

Come now the respondents and move the court for an order requiring complainants to file a cost bond herein as required by law, for the reason that the complainants do not reside in the State of Washington and are citizens of the Kingdom of Great Britain and Ireland.

It is further moved that the court will stay the proceedings herein until such bond shall have been given and due notice thereof served.

Said motion is based upon the records and files in said cause.

W. F. HAYS AND
J. P. HOUSER,
Attorneys for Respondent Marie Carrau, and
PRATT & RIDDLE,
Attorney- for Terrence O'Brien, Administrator, etc.

Received copy of within this 6th day of August, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.

[Duly filed August 6, 1901.]

[Title of Court and Cause.]

Motion to Strike from Files Motion for Cost Bond.

Come now the above-named complainants and move the court to strike from the files in the above-entitled suit the motion of
27 the above-named defendants for an order requiring complainants to file a cost bond in the above-entitled suit upon

the ground that such motion is unknown to the practice in equity in this court; that said motion was served and filed, if filed at all, after the time within which said defendants were required to appear in the above-entitled suit and without leave of court.

The said complainants also further move the court to strike from the files in the above-entitled suit the paper purporting to be a motion of the above-named defendants for the abatement of the above-entitled suit and for the dismissal of the above-entitled suit upon the ground that such motion is a paper unknown to the practice in equity in this court, and was served and filed, if filed at all, after the time within which said defendants, and each of them, were required to appear in the above-entitled suit and without leave of court.

The above-named complainants further move the court for an order for a decree *pro confesso* against said defendants, and each of them, upon the ground and for the reason that said defendants, and each of them, have failed to appear in the above-entitled suit within the time prescribed by law or the rules of the above-entitled court, or at all.

To Messrs. Pratt and Riddle, W. F. Hays and J. P. Houser, solicitors for the above-named defendants and each of them:

You and each of you are hereby notified that on the 27th day of August, 1901, at ten o'clock a. m., or as soon thereafter as
28 counsel can be heard, at the courtroom in the circuit court of the United States, for the district of Washington, in the city of Seattle, the above motion will be brought on for hearing before the Honorable C. H. Hanford, judge of the United States circuit court of said district.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainants.

STATE OF WASHINGTON, } *ss:*
County of King, }

Louis G. Knight, being first duly sworn, on oath says that he personally served the within motion and notice on the within-named W. F. Hays, solicitor for Marie Carrau by leaving a true copy thereof with J. J. Hays, a person in charge of the office of said W. F. Hays, in the New York block in Seattle in said county, at the hour of 1 o'clock p. m., on this 16th day of August, 1901. Affiant further says that he was unable to find said W. F. Hays at his said office or elsewhere on said day.

LOUIS G. KNIGHT.

Subscribed and sworn to before me this 16th day of August, 1901.
[NOTARIAL SEAL.] PIERRE P. FERRY,
Notary Public in and for the State of Washington, Residing at Seattle.

Copy of within received this 16th day of August, 1901.

PRATT & RIDDLE,
Attorneys for Administrator.

[Duly filed August 16, 1901.]

29 [Title of Court and Cause.]

Motion to Dismiss Cause.

To the honorable judges of the circuit court of the United States for the ninth circuit, district of Washington, northern division:

Marie Carrau, one of the defendants herein, appearing specially for the purpose of objecting to the jurisdiction of this court to entertain under the bill of complaint herein filed, both as to the court's jurisdiction of the parties and of the subject matter of this action.

I.

Your oratrix respectfully shows unto your honors that the complainants herein allege in their said bill that they are heirs, and entitled to inherit as such, the property of the late John Sullivan, deceased, whose estate is now being administered in the superior court of King county, Washington; and was being administered upon long prior to and at the time of the filing of said bill; and said superior court in the probate department thereof has by law the exclusive jurisdiction of the matters and things set up and claimed in said bill, in virtue of its said proceedings, and jurisdiction acquired in said estate.

II.

Your oratrix further alleges that the matters and things pleaded in said bill are exclusively subject to the jurisdiction of the probate court of the State, and not cognizable in the Federal court.

30 III.

Your oratrix further represents and shows unto your honors that the complainants are seeking to establish by said bill their right and claim to inherit and acquire property of the said John Sullivan, deceased, and this court has not jurisdiction to determine said matter, for the reason that there are other and different claimants, for a similar right and claim of inheritance to said estate; among which said claimants is one Eugene Timothy Sullivan, whose said right to inherit, and claim of heirship to said estate has been duly filed and verified in the superior court of King county, Washington, and who was at the time of the death of the said John Sullivan, and for a long time prior thereto, and now is, a *bona fide* citizen of the United States, residing in the city of Olympia, Thurston county, Washing-

ton; a copy of which claim of heirship is herewith filed and made a part hereof, for the purposes of this motion.

Wherefore your oratrix prays that said cause be dismissed at the cost of plaintiffs, and that your oratrix may go hence without day.

W. F. HAYS AND
J. P. HOUSER,
Solicitors for Defendant Marie Carrau.

31 [Title of Court and Cause.]

To the honorable judges of the above-entitled court, and to Terrence O'Brien, administrator of said estate; Marie Carrau, claiming to be a legatee of the deceased under an alleged nuncupative will, and *and* to all others claiming to be heirs of the said deceased or in any manner interested in said estate:

You and each of you are hereby notified that the undersigned, Eugene Timothy Sullivan, is an heir at law of the deceased, John Sullivan, and that as such heir is entitled to the estate left by the said John Sullivan; that the undersigned was born near Killarney, in Kerry county, Ireland, in 1839; that I came to the United States from Ireland in 1864, took out my first papers in the State of Wisconsin in the year 1868, and received my full papers in the State of Dakota in 1887, and removed to the State of Washington in the year 1890, and have been ever since and am now a naturalized citizen of the United States and a *bona fide* resident of Olympia, Thurston county, Washington; that the said John Sullivan deceased, was a first cousin of the undersigned, being a son of my father's brother; that both my father and mother have been dead for some years, my father dying when I was eleven years old, all of which I hereby state to be true as I verily believe.

EUGENE T. SULLIVAN.

32 Subscribed and sworn to before me this 22d day of August, 1901.

WILLIAM CROSBY,
Notary Public in and for the State of Washington,
Residing at Olympia, Wash.

[Duly filed August 27, 1901.]

[Title of Court and Cause.]

Order Granting Additional Time to Plead.

The motion of the above-named complainants to take from the files the paper filed by the above named defendants, purporting to be an objection to the jurisdiction of the court, and the motion of

the defendants for an order requiring the complainants to give security for costs, having come on for hearing on the 27th day of August, 1901, after hearing argument—

It is ordered that the motion of said complainants to take from the files the motion of the defendants for an order requiring complainants to give security for costs be, and the same is hereby, for the present denied, subject to the further action of the court; that the motion of said complainants to take from the files the paper filed by defendants objecting to the jurisdiction of the court, be, and the same is hereby, granted, and the defendants are allowed up to and inclusive of the second day of September, 1901, to plead.

C. H. HANFORD,
United States District Judge, Presiding in the Circuit Court.

[Duly filed August 27, 1901.]

33 [Title of Court and Cause.]

Stipulation and Answer of Terrence O'Brien.

It is hereby stipulated and agreed by and between Hannah Calligan and Edward Corcoran, the complainants above named and Terrence O'Brien as administrator of the estate of John Sullivan, deceased, one of the above named defendants, by and through Messrs. Piles, Donworth & Howe, and Charles Farrell, solicitors for said complainants, and Pratt & Riddle, solicitors for said defendant, as follows, to-wit:

First. That said defendant Terrence O'Brien was, on the 19th day of November, 1900, duly and regularly appointed administrator of the estate of John Sullivan, deceased, by the superior court of the State of Washington, for King county, sitting in probate, and that ever since said date said defendant has been and now is the duly qualified and acting administrator of said estate of John Sullivan, deceased, and during said time has been and now is administering upon said estate, exercising the care and management thereof and reporting his acts and doings as such administrator to the said superior court of King county.

Second. That except in the discharge of his said trust as such administrator and in preserving said estate and obeying the orders of said superior court with reference thereto, said respondent has no interest in the subject matter of the controversy herein between said complainants and his above named codefendant, Marie Carrau, and said defendant Terrence O'Brien, as such ad-
34 ministrator, has no knowledge or information concerning the matters or things, or any of them, involved in or arising out of said controversy other than such knowledge or information as is chargeable to said defendant by the records and proceedings in said superior court, and particularly in probate cause No. 3,664 in

said court, in which said defendant was appointed such administrator, and said defendant disclaims any interest in said suit.

Third. That in no event shall costs be taxed against said administrator or said estate, nor shall said complainants be put to proof of the allegations of said bill, so far as the same affect said administrator.

Fourth. That this stipulation shall operate and be taken as and for an answer of said defendant to the bill of complaint herein, as effectually and to all intents and purposes as though said defendant had answered each and every of the allegations thereof seriatim.

HANNAH O'CALLIGAN AND
EDWARD CORCORAN, *Complainants*,
By PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainants.
TERRENCE O'BRIEN,
Administrator of the Estate of John Sullivan, Deceased, Defendant,
By PRATT & RIDDLE,
Solicitors for Defendant Terrence O'Brien, Administrator of the Estate of John Sullivan, Deceased.

[Duly filed September 3, 1901.]

35 [Title of Court and Cause.]

Appearance for Terrence O'Brien and Maria Carrau.

To the clerk of the above-entitled court:

You will please enter our appearance as attorneys for Terrence O'Brien as administrator, etc., and Marie Carrau, defendants in the above-entitled cause.

PRATT & RIDDLE,
For Terrence O'Brien, Administrator, etc.
W. F. HAYS,
J. P. HAUSER, AND
JOS. W. ROBINSON,
For Marie Carrau.

[Duly filed September 3, 1901.]

[Title of Court and Cause.]

Plea in Abatement.

Comes now the defendant, Marie Carrau, and objects to the jurisdiction of this court and defends the wrong and injury in said bill alleged, and prays judgment of said bill because she says that here-

tofore, to wit, on or about the 20th day of June, 1901, the complainants as petitioners, by their attorneys, Piles, Donworth & Howe, and C. H. Farrell, filed their petition in the superior court of King county, Washington, *In re* estate of John Sullivan, deceased, contesting the will of the said John Sullivan, deceased, referred to in complainants' bill in this action and which contest is still pending and undetermined. That one Eugene Timothy Sullivan, at the
36 *date of the — said* John Sullivan, deceased, and for a long time prior thereto, and ever since was and is now a resident of the city of Olympia, county of Thurston, a citizen of the United States and State of Washington, and on August 23d, 1901, filed his verified claim in said cause, No. 32,664, in said superior court of King county, Washington, as an heir at law of said decedent, to wit, the son of a brother of the said John Sullivan, deceased, and entitled to inherit the estate of the said John Sullivan, and the said Eugene Timothy Sullivan has duly served upon this defendant a copy of his verified claim as such heir at law to the estate of the said John Sullivan, deceased, a copy of which claim is hereto attached and made a part hereof for the purpose of this plea as Exhibit "A;" and that one year has not elapsed since the death of decedent, to wit, September 26th, 1900, nor since the date of the probation of decedent's will, to wit, March 8, 1901.

And the said Hannah O'Calligan and the said Edward Corcoran are citizens of the isle of Great Britain as alleged in complainants' bill, and the said Eugene Timothy Sullivan was, at all times herein mentioned, and now is, a citizen of the State of Washington, as in his notice and claim supposed and alleged; that the complainants if they had any cause of action against the defendant Marie Carrau as set forth in their bill, ought to have brought their said action in the superior court of the county of King in the State of Washington and not in this court; and all the foregoing acts this defendant is ready to verify.

37 Wherefore, she prays judgment, whether this court can or ought to have or take further cognizance of this action.

MARIE CARRAU.
W. F. HAYS,
J. P. HOUSER,
JOS. W. ROBINSON,
Attorneys for Marie Carrau.

STATE OF WASHINGTON, }
County of King, } *ss:*

Marie Carrau, the above-named defendant in this cause, maketh oath and saith: That the plea hereunto annexed is true in substance and matter of fact.

MARIE CARRAU.

Subscribed and sworn to before me this 31st day of August, 1901.

[NOTARIAL SEAL.] WILLARD L. READ,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Title of Court and Cause.]

EXHIBIT "A."

To the honorable judges of the above-entitled court and to Terrence O'Brien, administrator of said estate; Marie Carrau, claiming to be a legatee of the deceased under an alleged nuncupative will, and to all others claiming to be heirs of the said deceased or in any manner interested in said estate:

38 You and each of you are hereby notified that the undersigned, Eugene Timothy Sullivan, is at heir at law of the deceased, John Sullivan, and that as such heir is entitled to the estate left by the said John Sullivan; that the undersigned was born near Killarney, in Kerry county, Ireland, in 1838; that I came to the United States from Ireland in 1864; took out my first papers in the State of Wisconsin in the year 1868 and received my full papers in the State of Dakota in 1887, and removed to the State of Washington in the year 1890 and have been ever since and am now a naturalized citizen of the United States and a *bona fide* resident of Olympia, Thurston county, Washington; that the said John Sullivan, deceased, was a first cousin of the undersigned, being a son of my father's brother; that both my father and mother have been dead for some years, my father dying when I was eleven years old, all of which I hereby state to be true as I verily believe.

EUGENE T. SULLIVAN.

Subscribed and sworn to before me this 22d day of August, 1901.

[SEAL.] WALTER CROSBY,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within plea received and due service of same acknowledged this September 3d, 1901.

P., D. & H. &
C. H. FARRELL,
Attorneys for Complainants.

[Duly filed September 3, 1901.]

39 [Title of Court and Cause.]

Order for Decree pro Confesso.

The bill of complaint having been filed in the above-entitled suit, and the subpœna issued herein having been served on the de-

fendants on the 20th day of June, 1901, and said subpœna having been duly returned to this court, showing service upon said defendants and each of them on said day, and it appearing that the defendant Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, has by his solicitors stipulated with the solicitors of the above-named complainants that no proof of the allegations and averments of the bill need be made by said complainants, and that said administrator disclaims any interest in the above-entitled suit, and it also appearing that the defendant Marie Carrau filed a certain paper in the above-entitled suit purporting to be a motion objecting to the jurisdiction of the court, and complainants having made a motion that said paper be taken from the files of the court, and the court having made an order taking said paper from the files and requiring said defendant Marie Carrau to plead to the bill on or before the 3d day of September, 1901, and it appearing that the said defendant has failed to plead, answer, or demur to the bill of complaint herein, and is in default therefore—

Now come complainants by their counsel, and enter an order that the bill of complaint herein be taken *pro confesso*.

40 Dated Seattle, Washington, September 3d, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.
C. H. FARRELL, *Of Counsel.*

To the clerk of the above-entitled court:

You will please enter forthwith the foregoing order for a decree *pro confesso* in the above-entitled suit.

Dated Seattle, Washington, September 3d, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.
C. H. FARRELL, *Of Counsel.*

[Duly filed September 3, 1901.]

[Title of Court and Cause.]

Order for Decree pro Confesso.

The bill of complaint having been filed in the above-entitled suit, and the subpœna issued herein having been served on the defendants on the 20th day of June, 1901, and said subpœna having been duly returned to this court, showing service upon said defendants and each of them on said day, and it appearing that the defendant Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, has, by his solicitors, stipulated with the solicitors of the above-named complainants that no proof of the allegations

41 and averments of the bill need be made by said complainants, and that said administrator disclaims any interest in the

above entitled suit, and it also appearing that the defendant Marie Carrau filed a certain paper in the above-entitled suit purporting to be a motion objecting to the jurisdiction of the court, and complainants having made a motion that said paper be taken from the files of the court, and the court having made an order taking said paper from the files and requiring said defendant Marie Carrau to plead to the bill on or before the 2d day of September, 1901, and it appearing that the said defendant has failed to plead, answer, or demur to the bill of complaint herein, and is in default therefore—

Now come complainants by their counsel, and enter an order that the bill of complaint herein be taken *pro confesso*.

Dated Seattle, Washington, September 5th, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.
C. H. FARRELL, *Of Counsel.*

To the clerk of above-entitled court:

You will please enter forthwith the foregoing order for a decree *pro confesso* in the above-entitled suit. The foregoing order is made for the purpose of entering a decree *pro confesso* in the above-entitled suit as of this, the 5th day of September, 1901. The foregoing order is also made to correct a mistake in the order for a decree *pro*
42 *confesso* entered on the 3d day of September, 1901, which said order, in reciting an order of court previously made, by mistake stated that said Marie Carrau was required to plead on or before the 3d day of September, when in truth and in fact said order requiring her to plead required her to plead on or before the 2d day of September, 1901, and the 3d day of September was erroneously recited in said order for a decree *pro confesso*, instead of the 2d day of September, 1901.

Dated Seattle, Washington, September 5th, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.
C. H. FARRELL, *Of Counsel.*

[Duly filed September 5, 1901.]

[Title of Court and Cause.]

Motion for Issuance of Commission to Take Depositions in Ireland.

Now come the above-named complainants, and move the circuit court of the United States for the district of Washington to grant a commission directed to George Lawrence, Esq., barrister at law and notary public, of 17 Charlotte quay, in the city of Cork, Ireland, or to Daniel Swiney, Esq., consul of the United States at Cork and Queenstown, Ireland, or to some other person to be appointed by the court, and directing the clerk of this court to issue a commission to

the person appointed by the court to take the deposition of
43 each of the witnesses named in the annexed affidavit as witnesses in behalf of the complainants in the above-entitled suit, and requiring said commissioner upon said depositions being taken to return the same to the clerk of this court.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainants.

[Title of Court and Cause.]

Affidavit of S. H. Piles.

STATE OF WASHINGTON, } ss:
County of King, }

S. H. Piles, being first duly sworn, on oath deposes and says:

I am one of the solicitors for the complainants in the above-entitled suit, and have had submitted to me certified copies of documents in Ireland, the originals of which documents are in the possession of the proper custodians of such documents. I have also had submitted to me affidavits made by some of the persons hereinafter mentioned, which affidavits show that such persons are acquainted with the family history of John Sullivan, deceased, under whom the complainants in this suit claim. In this suit the defendant Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, has entered his disclaimer, and the defendant Marie Carrau is in default, an order for a decree *pro confesso* against her having been heretofore entered. Each and every of
44 the persons hereinafter named as a witness, whom the complainants desire to examine in their behalf, reside out of the State of Washington and out of the United States, and at the place specified as the residence of such witness hereinafter set forth. It is necessary for complainants and each of them to have the testimony of each and every of the persons hereinafter named, and the only way in which such testimony can be obtained is by a commission being issued out of this court, appointing a commissioner to take the testimony of such person. The Rev. Canon Carey, parish priest, Carrigaline, County Cork, Ireland, the Rev. John A. Daly, rector of St. Finbar, Cork, Ireland, and the Rev. Mark Leonard, of St. Finbar, Cork, Ireland, are custodians of the parish records of their respective parishes, and complainants desire to examine said persons and have them prove the parish records and attach to their depositions certified copies of such parish records, showing the family history of John Sullivan, deceased, and the relationship of the complainants to said John Sullivan, deceased. J. Cother (or Cotter) is the superintendent of the registrar of births, deaths and marriages for the district of Cork, and complainants desire to prove by him

the deaths of certain relatives of John Sullivan, deceased. R. W. Wolseley has custody of the records of the probate department of the Court of Queen's Bench for the district of Cork, and complainants desire to prove by him the administration proceedings upon the estates of certain relatives of John Sullivan, deceased, and the proof made by said John Sullivan, deceased, of his heir-
45 ship to the estates of such persons. The witness, Miss —— Bull, is connected with Bull's lunatic asylum, near Cork, and complainants desire to prove by her that the sister of John Sullivan, deceased, was an inmate of said asylum, and that said John Sullivan, deceased, maintained his sister at said asylum, and upon her death paid her funeral expenses, and thereafter administered upon her estate, and that the complainants are the first cousins of said John Sullivan, deceased. The other persons hereinafter named as witnesses are all acquainted with the family history of John Sullivan, deceased, and with the family history of each of the complainants, and will show, as deponent is informed and believes, that the said John Sullivan, deceased, was a first cousin of the complainants in this suit, and that complainants are the only heirs and next of kin of said John Sullivan, deceased.

Deponent further deposes and says; that each and every of said persons is a material witness, and that their testimony cannot be obtained except under a commission.

Deponent further deposes and says, that it may become necessary hereafter to take the testimony of other persons residing in Ireland.

Wherefore, deponent prays for an order directing an open commission to be issued to George Lawrence, Esq., barrister at law and notary public, of 17 Charlotte quay in the city of Cork, Ireland, or to Daniel Swiney, Esq., consul of the United States at Cork
46 and Queenstown, Ireland, or to some other person to be appointed by the court, to take the testimony of each and all of the following named persons, to wit:

Edward Corcoran, 44 Queen St., Dublin, Ireland.

Hannah O'Callaghan, Gillaclough cottages, off Ford St., Cork, Ireland.

Rev. John A. Daly, rector of St. Finbar, Cork, Ireland.

Rev. Mark Leonard, of St. Finbar, Cork, Ireland.

J. Cother (or Cotter), superintendent of registrar of births, deaths and marriages for district of Cork, having an office at Douglass roads, Cork.

Ellen Davidson, Crone's land, off Evergreen street, Cork.

Elizabeth Cowlig, 114 Evergreen road, Cork.

Catherine Murphy, No. 5 Crone's lane, Cork.

Dennis Riordan, No. 2 Crone's lane, Cork.

Mary B. Davidson, No. 2 Crone's lane, Cork.

Nora O'Connell, 15 Evergreen St., Cork.

Rev. Canon Carey, parish priest, Carrigaline, County Cork.

Miss —— Bull, of Bull's lunatic asylum, Black Rock road, near Cork.

R. W. Wolseley, district registrar of the high court of justice in Ireland, Queen's Bench division probate district registry at Cork.

And of such other persons as may be produced by the complainants from time to time to be examined as witnesses in their behalf in the above-entitled suit.

S. H. PILES.

47 Subscribed and sworn to before me this 5th day of September, 1901.

[NOTARIAL SEAL.] SCOTT CALHOUN,
Notary Public in and for the State of Washington, Residing at Seattle.

Copy of within motion and affidavit received this 5th day of September, 1901.

PRATT & RIDDLE,
Solicitors for Administrator.

[Duly filed September 6, 1901.]

[Title of Court and Cause.]

Notice of Filing of Application for Issuance of Commission to Take Depositions in Ireland.

To Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and to Messrs. Pratt & Riddle, his solicitors:

You and each of you are hereby notified that on Tuesday, the 10th day of September, 1901, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the above-named complainants, by the undersigned, their counsel, will make application to the circuit court of the United States for the district of Washington, at the courthouse in the city of Seattle, State of Washington, to grant a commission, and for an order directing an open commission to issue to George Lawrence Esq., barrister at law and notary public, of 17 Charlotte quay in the city of Cork, Ireland, or to Daniel
18 Swiney Esq., counsel of the United States at Cork and Queenstown, Ireland, or to some other person to be appointed by the court, for the taking of the depositions of the witnesses hereinafter named and such other witnesses as may be produced from time to time before the commissioner appointed by the court, upon oral questions to be propounded to such witnesses and each of them at the time of the giving of their depositions. The names of the witnesses to be examined, and the residence of each of said witnesses are as follows, to wit:

Edward Corcoran, 44 Queen St., Dublin, Ireland.

Hannah O'Callaghan, Gillaclough cottages, off Ford St., Cork, Ireland.

Rev. John A. Daly, rector of St. Finbar, Cork, Ireland.
Rev. Mark Leonard, of St. Finbar, Cork, Ireland.
J. Cother (or Cotter), superintendent of registrar of births, deaths and marriages of district of Cork, having an office at Douglass roads, Cork.
Ellen Davidson, Crone's lane, off Evergreen street, Cork.
Elizabeth Cowlig, 114 Evergreen road, Cork.
Catherine Murphy, No. 5 Crone's lane, Cork.
Dennis Riordan, No. 2 Crone's lane, Cork.
Mary B. Davidson, No. 2 Crone's lane, Cork.
Nora O'Connell, 15 Evergreen street.
Rev. Canon Carey, parish priest, Carrigaline, County Cork.
Miss —— Bull, of Bull's lunatic asylum, Black Rock road, near Cork.

49 R. W. Wolseley, district registrar of the high court of justice in Ireland, Queen's Bench division probate district registry at Cork.

All of said witnesses to be called and examined in behalf of complainants.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainants.

Copy of within notice received this 5th day of September, 1901.
PRATT & RIDDLE,
Solicitors for Administrator.

[Duly filed September 6, 1901.]

[Title of Court and Cause.]

Motion for Order to Strike from Files Order for Decree pro Confesso.

Comes now the defendant, Marie Carrau, and moves the court for an order striking from the order-book of the above-entitled court the pretended order for a decree *pro confesso* in the above-entitled suit against the defendant Marie Carrau, for the reason that the same has been improperly and improvidently entered. Said motion is based on the records and files in this cause.

W. F. HAYS,
J. P. HOUSER, AND
JOS. W. ROBINSON,
Solicitors for Defendant.

50 To Messrs. Piles, Donworth & Howe and C. H. Farrell, solicitors for the above-named plaintiffs:

Take notice that the defendant will call up the foregoing motion before the above-entitled court on Monday, September 16th, 1901, or as soon thereafter as counsel can be heard.

W. F. HAYS,
J. P. HOUSER, AND
JOS. W. ROBINSON,
Solicitors for Defendant.

[Duly filed September 9, 1901.]

[Title of Court and Cause.]

Order for Commission to Take Depositions.

On reading and filing the affidavit of S. H. Piles, one of the solicitors for the complainants in the above-entitled suit, and the motion of complainants for the issuance of a commission and the notice of said motion, with the admission of service thereof on the solicitors for the defendant Terrence O'Brien as administrator of the estate of John Sullivan, deceased, and it appearing to the court that an order for a decree *pro confesso* has been entered against the defendant Marie Carrau—

On motion of Piles, Donworth & Howe, and C. H. Farrell, solicitors for complainants, it is ordered, that a commission be issued in this suit out of this court, under the hand of the clerk and the seal of this court, directed to the consul of the United States, and in the alternative, respectively to his successor in office,
51 to the vice-consul of the United States, to the deputy or representative of said consul of the United States, each of whom in case of the absence or disability of Daniel Swiney, the present consul, is hereby separately appointed in the order designated, commissioner, and to act in his place and stead, at the following named places, respectively, namely: to Daniel Swiney, Esq., consul of the United States at Cork and Queenstown, and in alternative respectively to his successor in office, to the vice-consul, deputy or representative of such consul or the successor of such consul, who in case of his absence or disability, is hereby separately appointed in the order designated, commissioner, and to act in his place and stead, to examine the following named persons under oath as witnesses herein, in behalf of the above-named complainants, to wit:

Edward Corcoran, 44 Queen St., Dublin, Ireland.

Hannah O'Callaghan, Gillaclough cottages, off Ford St., Cork, Ireland.

Rev. John A. Daly, rector of St. Finbar, Cork, Ireland.

Rev. Mark Leonard, of St. Finbar, Cork, Ireland.

J. Cother (or Cotter), superintendent of registrar of births, deaths and marriages for district of Cork, having an office at Douglass roads, Cork.

Ellen Davidson, Crone's lane, off Evergreen street, Cork.

Elizabeth Cowlig, 114 Evergreen road, Cork.

Catherine Murphy, No. 5 Crone's lane, Cork.

Dennis Riordan, No. 2 Crone's lane, Cork.

Mary B. Davidson, No. 2 Crone's lane, Cork.
52 Nora O'Connell, 15 Evergreen street.

Rev. Canon Carey, parish priest, Carrigaline, County Cork.

Miss —— Bull, of Bull's lunatic asylum, Black Rock road, near Cork.

R. W. Wolseley, district registrar of the high court of justice in Ireland, Queen's Bench division probate district registry at Cork.

It is further ordered that the examination of witnesses under this commission shall take place prior to the first day of January, 1902.

It is further ordered that the examination of all witnesses under this commission shall be oral, or taken by question and answer in the usual manner of taking oral depositions, by examination, cross-examination and re-direct examination; that the testimony at such examination shall be reduced to writing, signed by the witnesses if their signatures are not waived, and certified by the commissioner taking such testimony, and by such commissioner transmitted by mail to the clerk of this court at Seattle.

It is further ordered that the defendant administrator may, if he be so advised, attend the taking of the testimony of said witnesses and any others whose testimony may be taken in behalf of the complainants, and cross-examine said witnesses.

It is further ordered that the complainants and the defendant administrator shall have the right to examine not only the witnesses herein named, but any other witnesses whom they may desire to examine and who shall be produced before said commissioner,
53 his vice-consul, deputy or representative, the time and place of taking the testimony of such witnesses and the names and addresses of such witnesses to be furnished by the party taking the same to the solicitors in Seattle or Ireland of the other party, five days prior to the time designated for the taking of such depositions; the designation "party" in this order meaning the complainants on the one hand and the defendants administrator on the other, but not the defendant Marie Carrau, who is in fault.

It is further ordered that the testimony of any and all witnesses taken under this commission may be taken down by any person designated by the commissioner, his vice-consul, deputy or representative, in shorthand, and thereafter written in typewriting or longhand, or it may be written out originally in long hand, at the election of the officer before whom such testimony is taken.

It is further ordered that the taking of testimony under this commission shall not be begun until the 15th day of October, 1901, but the taking of testimony may be begun on said day, if at any time not less than five days prior to said day notice of the taking of such testimony shall be given by the one party to the other; the testimony of any witnesses may be taken after 15th day of October, 1901, upon the one party giving to the other a notice of the taking of such testimony five days prior to taking the same, which shall state the name and address of the witness whose testimony
54 such party desires to take, and the time and place of taking the same. Such notice may be served by the solicitors of the one party on the solicitors of the other, either in Seattle or in Ireland.

It is further ordered that when the the taking of testimony has been begun, the commissioner herein appointed, his vice-consul

deputy or representative, shall have the right to adjourn the taking of depositions from time to time in his discretion.

Dated Seattle, Washington, September 11th, 1901.

C. H. HANFORD,
District Judge of the United States, Presiding in the Circuit Court of the United States.

[Duly filed September 12, 1901.]

[Title of Court and Cause.]

Affidavit of Elmer E. Todd.

STATE OF WASHINGTON, } ss:
County of King, }

Elmer E. Todd, being first duly sworn, on oath deposes and says: That he is over twenty-one years of age, is not a party to the above-entitled action and is competent to be a witness therein; that on the 11th day of October, A. D. 1901, he served on the above-named defendants, and each of them, a notice that the final decree proposed by complainants herein would be presented to the above-named court on the 14th day of October, 1901, at 10 o'clock a. m.;
55 that he served said notice on the defendant, Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, by leaving a copy of said notice with a copy of said proposed final decree attached thereto at the office of his solicitors, Messrs. Pratt & Riddle, in the Bailey bldg., Seattle, Wash., with one Robert F. Booth, the person in charge of said office, said Pratt and Riddle being absent therefrom, that he served said notice on the defendant, Marie Carrau, by leaving a copy of said notice with a copy of said proposed final decree attached thereto at the office of her solicitor, W. F. Hays, Esq., in the New York block, Seattle, Wash., with one J. J. Hays, the person in charge of said office, said W. F. Hays being absent therefrom.

ELMER E. TODD.

Subscribed and sworn to before me, this 14th day of October, 1901.

[NOTARIAL SEAL.] JAMES B. HOWE,
Notary Public in and for the State of Washington, Residing at Seattle.

[Duly filed October 14, 1901.]

[Title of Court and Cause.]

Notice of Application for Signing of Final Decree.

To Messrs. Pratt & Riddle, solicitors for the defendant Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and to Messrs. Pratt & Riddle, W. F. Hays and J. P. Houser, solicitors for the defendant Marie Carrau:

56 You, and each of you, are hereby notified that, at 10 o'clock a. m. on Monday, the 14th day of October, 1901, the undersigned will present to the circuit court of the United States for the district of Washington, at the courthouse in the city of Seattle, State of Washington, a final decree in the above-entitled suit, a copy of which final decree is herewith served upon you, and at said time will request said court to sign said decree and direct the same to be entered in the above-entitled suit as the final decree herein.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors for Complainants.

[Duly filed October 14, 1901.]

[Title of Court and Cause.]

Decree.

This cause came on to be heard at this term, upon the bill, the disclaimer of the defendant Terrence O'Brien, as administrator of the estate of John Sullivan deceased, and the order for a decree *pro confesso* against the defendant Marie Carrau, and upon the other papers filed in the above-entitled suit.

And it appearing that the bill in equity in the above-entitled suit was filed in this court on the 20th day of June, 1901; that a subpœna was duly issued and served on the defendants, and each of them; that the defendant Terrence O'Brien as administrator
57 of the estate of John Sullivan, deceased, filed a written stipulation in the above-entitled suit wherein he disclaimed any interest therein and stipulated that the complainants should not be put to proof of any of the allegations of said bill against said administrator.

And it appearing that the defendant Marie Carrau appeared in the above-entitled suit, by her solicitors; that, after appearing, she was ordered to plead on or before the first Monday in September, 1901; that she failed to plead on said day, and thereafter, and that, for her failure so to plead, an order for a decree *pro confesso* was entered on the 6th day of September, 1901, by the solicitors for

the complainants, which said order was entered in the order-book of this court.

And it also appearing that more than thirty days have elapsed since the entering of said order taking said bill *pro confesso*, as aforesaid, against the said Marie Carrau;

And it also further appearing to the court that the allegations of complainants' bill are clear and certain, that John Sullivan, late of the city of Seattle, State of Washington, died on the 26th day of September, 1900, in said city of Seattle, in the county of King and State of Washington, intestate, leaving in said city, county and State, a large amount of real and personal property, which said real property exceeded in value the sum of four hundred thousand dollars ($400,000), and which said personal property exceeded in value the sum of twenty thousand dollars ($20,000), and that, at the time
58 of his death, the said John Sullivan, left surviving him no widow or lineal descendant, nor any lineal ancestor, nor heir at law or next of kin, except the complainants, each of whom was a first cousin of said John Sullivan, deceased, and each of whom was an heir at law and next of kin of said John Sullivan, deceased, in equal degree with the other;

And it also further appearing by the allegations of the bill, and it being the law of this State that the alleged nuncupative will under which the defendant Marie Carrau claims the estate of said John Sullivan, deceased, and the whole thereof; was and is, on the face of said alleged will, absolutely null and void and of no force and effect;

And it also further appearing to the court that, on the 19th day of November, 1900, in cause numbered 3,664, in the probate department of the superior court of the State of Washington, for King county, the defendant Terrence O'Brien was by said court duly appointed administrator of the estate of said John Sullivan, deceased, and that the said Terrence O'Brien at once qualified as such administrator, and letters of administration were forthwith issued to him, and that ever since his said qualification he has been the duly qualified and acting administrator of said estate, and the complainants have submitted to the court proofs establishing to the satisfaction of the court the allegations of the bill in the above-entitled suit;

And it also appearing that each of the defendants have had notice that this decree would on this day be presented to this court, to be signed and entered:

59 Now, therefore, upon consideration of the said bill, the disclaimer of the defendant, Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and the proofs of the said complainants, and by reason of the default of said defendant Marie Carrau—

It is by the court, upon consideration thereof ordered, adjudged and decreed, as follows, to wit:

That the complainant Hannah O'Callaghan, otherwise known as

Johanna Callaghan, is a first cousin of John Sullivan deceased, who died in the city of Seattle and State of Washington, on the 26th day of September, 1901, and whose estate is now being administered in the superior court for the State of Washington, in the county of King, in cause numbered 3,664, in the probate department of said court, and that the complainant Edward Corcoran is also a first cousin of the said John Sullivan, deceased.

It is further ordered, adjudged and decreed that the said complainants are the only heirs at law and next of kin left surviving him by the said John Sullivan at the time of his death; that they are heirs and next of kin of the said John Sullivan of the same rank and degree, and that there is not any other heir or next of kin of said John Sullivan, deceased, in the same degree or nearer than the complainants.

It is further ordered, adjudged and decreed that the alleged nuncupative will claimed by the defendant Marie Carrau to have been made by the said John Sullivan, deceased, at about eleven o'clock p. m. on the 25th day of September, 1900, in the following
60 words, to wit: "I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister Marie Carrau. I am sick, and we know not what might happen," was and is, under the law of the State of Washington, absolutely null, void and of non effect, and that the same does not convey, and did not convey, to the said Marie Carrau, any interest whatsoever in the estate of the said John Sullivan, deceased, or any part thereof, and that said Marie Carrau, her agents, attorneys, and all persons whomsoever acting in her behalf, be and they are hereby perpetually restrained and forever enjoined from asserting, at any time and in any place, any claim whatsoever to the estate of said John Sullivan, deceased, or any part thereof, under and by virtue of said alleged nuncupative will.

It is further ordered, adjudged and decreed that, subject to the debts of the said John Sullivan, deceased, and of his estate, and the expenses of administering the same, the complainants together are entitled to receive, from the administrator of said estate, the said estate, and the whole thereof, and that the interest of each of said complainants is a one-half interest in said estate.

It is further ordered, adjudged and decreed that the complainants have and recover from the defendant Marie Carrau their costs in this suit to be taxed by the clerk of this court; that, as against the administrator, the complainants shall not recover, nor shall
61 said administrator recover costs against the complainants, or either of them.

October 14, 1901.

____ ____,

District Judge of the United States, Presiding in the Circuit Court of the United States, for the District of Washington.

[Title of Court and Cause.]

Motion for Order Vacating Default.

Comes now the defendant and moves this honorable court to vacate the entry of default "*pro confesso*" heretofore entered in the order-book of said court by the solicitors of complainants, on, to wit, the 3d day of September, 1901, and for leave to file her answer to the merits in this case; said motion is based upon the affidavit of merits of the defendant Marie Carrau with her proposed answer to the merits, also the affidavit of W. F. Hays, one of her solicitors, and the records and files in said cause.

W. F. HAYS,
J. P. HOUSER, AND
JOS. W. ROBINSON,
Solicitors for Defendant, Marie Carrau.

62 [Title of Court and Cause.]

Affidavit of Merit.

STATE OF WASHINGTON, } *ss:*
County of King, }

Marie Carrau, the defendant named in the above-entitled action, being duly sworn, on oath deposes and says:

That she has fully and fairly stated the case in the above action to W. F. Hays, her counsel, who resides at Seattle, Washington, county of King, and that she has a good and substantial defense upon the merits in the action, as she is advised by her said counsel after such statements made as aforesaid, and verily believes to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 17th day of October, 1901.

[NOTARIAL SEAL.] FRANK. H. KNAPP,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Title of Court and Cause.]

Affidavit of W. F. Hays.

STATE OF WASHINGTON, } *ss:*
County of King, }

W. F. Hays, being duly sworn, on oath deposes and says, that he is one of the solicitors for the defendant, Marie Carrau, named
63 in the foregoing action, that while acting as said solicitor on, to wit, the 26th day of August, 1901, in said court upon the

hearing of the motion of complainants to strike from the files, defendant's motion for cost bond, and her plea in abatement, affiant understood the order made by the judge of said court, the Honorable C. H. Hanford, "motion denied as to the cost bond, pursuant to rule 19 of said court," but that it was urged by complainant that the defendant, Marie Carrau, had not appeared in said action and the Honorable C. H. Hanford orally announced that "upon the appearance" of the defendant, Marie Carrau, the motion for cost bond would be granted, and affiant understood the court sustained the motion to strike the plea in abatement, for the reason that said plea was not verified but that the proper motion for complainants against said plea was "to take said paper from the files," but that the motion to strike the plea would be granted with leave to the defendant to plead on or before Monday, 2d day of September, 1901.

That affiant prepared for the defendant her plea in abatement, verified by her under rule 31, "that it is true in point of fact," but affiant was mislead in his construction of said rule 31, and did not also add "a certificate of counsel" *and* is required by said rule, through inadvertence, it being the understanding of affiant that the rules of the circuit court of the United States for the district of Washington, and especially rule 8, had limited the necessity for this certificate to a "demurrer."

Affiant says that as such solicitor he would have then made the certificate as required by rule 31, that in his opinion it is well
64 founded in point of law, and would have had said plea supported by the affidavit of the defend- that the same was not interposed for delay, and has always been ready and willing, and will now, if permitted by order of court so to do, make such certificate and cause said verification to be made by the defendant, as required by rule 31.

Affiant says that the pleas herein filed on the part of the defendant were made at the instance of affiant as the solicitor for the defendant, in good faith, believing that they were and are well founded in point of law, and affiant further believes and says that the defendant Marie Carrau, has a good, valid, legal and substantial defense in this case on the merits, and that she will offer said defense instanter, if ordered by this court to make the same.

W. F. HAYS.

Subscribed and sworn to before me on this 19th day of October, 1901.

[NOTARIAL SEAL.] NELSON MACPHERSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Duly filed October 21, 1901.]

[Title of Court and Cause.]

Answer of Marie Carrau.

The defendant, Marie Carrau, now and at all times hereafter saving and reserving unto herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's
65 bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for her to make answer unto, this defendant answering, saith:

1st. That as to the allegations contained in paragraphs numbers 1, 5, 6, 17 and 18 of the complainants' bill the defendant Marie Carrau has no knowledge or information in the premises save by the complainants' bill, and neither admits nor denies said allegations, but calls for proof.

2d. The defendant, Marie Carrau, further answering, to paragraph 4, admits that the said John Sullivan, died in the city of Seattle, State of Washington, on the 26th day of September, 1900, but denies that he died intestate, and alleges the fact to be that he died leaving a will, by the terms of which this defendant is made his sole legatee and devisee; and admits that the said John Sullivan left no widow, child or lineal descendent, nor father, mother, sister, brother, uncle, aunt, nephew, niece, nor any granduncle, nor grandaunt, nor any grandnephew, nor grandniece, nor any ancestor lineal or collateral, and denies that the complainants nor either of them, are first cousins, or any other relation, to the said John Sullivan deceased.

3. Answering paragraph 7, defendant admits that shortly after the death of the said John Sullivan, a special administrator of his estate was appointed by the superior court of King county, State of Washington, who took charge of the estate and held the same
66 until his successor was appointed, the said defendant, Terrence O'Brien, and admits that the said O'Brien was appointed, duly qualified and assumed to act, and is still acting as the administrator of the estate of the said John Sullivan, deceased.

4. Answering paragraph 8, the defendant admits that Louis Daussat and this defendant, Marie Carrau, are brother and sister in law; admits that the said John Sullivan died seised of an estate in said King county, Washington, valued at the sum of about four hundred thousand dollars ($400,000.00). Further answering the said paragraph 8, defendant denies each a-d every allegation therein made and contained not herein specifically admitted.

5. Answering paragraph 10, defendant denies the same.

6. Answering paragraph 12, defendant admits that Augustine Daussat and Hermance Carrau are relatives of this defendant, and the said Louis Daussat by marriage; but denies that they, or either of them, combined or confederated together, or at all, for the pur-

pose of making a pretended *m*uncupative will of the said John Sullivan, or at all, in favor of the said defendant, Marie Carrau, or in favor of any one else, or for any other purpose whatsoever, but specifically alleges the facts to be that the said John Sullivan did duly make and publish a *m*uncupative will, devising all of his estate, both real and personal, to this defendant, the said Marie Carrau; and admits that this defendant Marie Carrau, is now, and has been, ever since the death of said Sullivan, claiming to
67 be the sole legatee and devisee of all of the property, both real and personal, of the said John Sullivan, deceased, thereunder and by reason thereof. But denies that it has been the intention of this defendant, as charged in said paragraphs 12 or Hermance Carrau, Louis Daussat and Augustine Daussat, or either of them, to carry out said conspiracy, or any other conspiracy, whatsoever, in order to obtain all the property, or any part thereof, or at all, of the said John Sullivan, deceased, by means of false testimony, or at all, or by the manufacturing of evidence to support said nuncupative will, or at all, or for any other purpose; and this defendant denies all, and all manner of combination, conspiracy or confederacy as charged in said paragraph and bill, or at all, or otherwise.

7. Answering paragraph 13, the defendant admits that the said John Sullivan, at the time of his death, was a bachelor and of the age of about sixty years; and admits that this defendant, at the time of the death of John Sullivan, was teaching the said John Sullivan the French language, and had been so teaching him for some time prior to his said death; and admits that the said John Sullivan had, a few months prior to his said death, returned to his home at the city of Seattle, Washington, from a short visit to France. And further answering paragraph 13, this defendant alleges the facts to be, that it was the intention of the said Sullivan, up to the time of his death, to again visit France, taking with him this defendant as his wife immediately after the marriage of this defend-
68 ant and the said Sullivan, which marriage was to take place at Seattle, Washington, on or about October first, 1900, and that after such visit this defendant and said Sullivan were to return to their home to permanently reside in the city of Seattle, State of Washington. And further answering said paragraph, this defendant denies that at the date of the death of said Sullivan, he the said Sullivan, was temporarily lodging at the house of said Louis Daussat, the house at which this defendant also resided; but alleges the facts to be that the said John Sullivan, deceased, at the date of his death, was, and had been for some months immediately prior thereto, a *bona fide* resident in said house.

8. Answering paragraph 14, this defendant denies that either the said Louis Daussat or the said Marie Carrau, this defendant, ever sought to secure the appointment, or of any one, as administrator of the said estate, and she denies that they, or either of them, ever circulated the report or any reports as therein alleged, and denies

each and every allegation therein contained in any manner referring to the appointment of said administrator, or to the circulation of said reports, or any reports, but alleges the facts to be that immediately after the death of the said John Sullivan, this defendant notified and informed her spiritual adviser that the said Sullivan did make and publish an oral will, devising and granting unto this defendant all of his property, both real and personal. And this defendant alleges the facts to be, that she never attempted to conceal the fact that the deceased did make and publish such a will. And further answering this defendant thereafter caused to be consulted a
69 regular practising attorney in the city of Seattle, State of Washington, as to whether or not such a will as was made by the said John Sullivan, was valid and legal under the laws of the State of Washington, and as to whether or not an oral will would devise property both real and personal, under the laws of said State, and was then and there, by such practising attorney, informed and advised that an oral will was not valid or legal under said laws.

And further answering said paragraph, this defendant alleges the facts to be, that it was not until several weeks thereafter that she was advised or apprised of the fact that the law of the State of Washington did authorize the making of a verbal will, and that the will so made by the said John Sullivan now deceased, was valid and that the same devised his estate, both real and personal, to this defendant. And this defendant, further answering said paragraph, denies each and every allegation therein contained not hereinabove specifically admitted.

9. Answering paragraph 17, this defendant denies that the said superior court acted wholly or at all without jurisdiction in the probating of said nuncupative will; and denies that said superior court, therein mentioned, was, at the date of the probate of said nuncupative will, or now, without jurisdiction with reference thereto; and denies that such superior court was without jurisdiction to hear the proof, or to establish said will. And denies that no citation was issued by said court with reference to the probation of said will. But alleges the facts to be that the said superior court of the
70 State of Washington, in and for the county of King, had, and has, the exclusive, original jurisdiction to probate wills; and had the sole, original and exclusive jurisdiction to probate said nuncupative will. And further answering said paragraph 17, this defendant alleges the facts to be that the said superior court acting as a court of probate, under the laws of the State of Washington, as is required by statute, secured the sole, original and exclusive jurisdiction of said nuncupative will, and upon citation duly and regularly issued and returned therein, in real estate — John Sullivan, deceased, and after hearing the proofs concerning the same, as to its execution and publication, probated said will, and by its decree declared the same to be the last will and testament of John Sullivan deceased, and then and there, and thereby took and secured the sole,

original and exclusive jurisdiction of said estate; and said decree establishing said will was made and entered on the 8th day of March, 1901, and that said decree has been ever since, and is now, in full force and effect. And this defendant further answering said paragraph, denies each and every allegation therein made or contained and not hereinabove specifically admitted.

10. Answering paragraph 18, defendant denies that under the laws of the State of Washington, wherein said property was and is wholly situated, a nuncupative will is invalid, where the estate exceeds the value of two hundred dollars ($200.00), or any other sum, or at all; and denies that a nuncupative will, under the laws of the State of Washington, will not dispose of, or devise real
71 estate, but alleges the facts to be that a nuncupative will, duly proved and probated, as hereinabove alleged, and as required by statute, devises both real and personal property to any amount in value, as shown by the laws enacted by the legislature of Washington, contained in the following words and figures, to wit:

"No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return." (See Ball. Code, vol. 1, sec. 4605.)

11. Answering paragraph 19, the defendant admits that she filed her petition in the superior court of King county, Washington, praying for the distribution to her of the whole of the estate of the said John Sullivan, deceased, including both real and personal property, and admits that said estate is but little indebted. Admits that among the properties of the said John Sullivan, deceased, claimed by this defendant, under the said will, is the said Sullivan building and the land upon which the same is situated, and admits that the said building and land is of the value of upwards of three hundred thousand dollars ($300.000); and admits that the rents, issues
72 and profits of said building are approximately worth the sum of twenty-five thousand dollars ($25,000.00) per year. And further answering said paragraph, the defendant denies each and every other allegation therein contained, not hereinabove in this paragraph specifically admitted.

12. Answering paragraph 20, this defendant denies each and every allegation therein contained, and each and every part and the whole thereof, and alleges the facts to be that said complainants, and neither of them, are heirs at law, or in any way related to the said John Sullivan, deceased.

13. Answering paragraph 21, defendant denies that the said superior court of King county, State of Washington, was without

jurisdiction to distribute said estate, or any part thereof, or any of the rents, issues, or profits issuing out of said real estate since the death of the said John Sullivan; and denies that said court is without jurisdiction in the exercise of its probate jurisdiction to manage and control the property of said estate, or the rents, issues, or profits of said real estate, and denies that the said real estate, and its rents, issues, and profits, is the property of the complainants or either of them, or any part or portion of said real estate, and denies that the distribution of the property in said estate to this defendant by the order of said superior court of King county, Washington, would deprive the complainants, or either of them, of any property right, real or personal, or any lawful interest or claim in and to any of the property of said estate; and denies that the vest-
73 ing of said property and of said estate, and the whole thereof, in this defendant by said superior court of King county, Washington, would deprive the complainants, or either of them, of any property right, claim, or interest, either in law or equity, to said estate, or any portion thereof, without due process of law, or at all; and denies that the vesting of said estate, or the distribution of said property by said superior court to this defendant, would be in violation of the rights of said complainants, or either of them, under the fourteenth amendment to the Constitution of the United States, or for any other reason, or at all.

14. Answering paragraph 22, defendant denies that complainants have any right, title or interest in or to said estate, or in any rents, issues, or profits in or to said estate; and denies that it is necessary that a receiver of said estate, or said real estate, or of said rents, issues, or profits, should be appointed in order to protect said complainants, or either of them, or at all. But alleges the facts to be that said complainants, and each of them, have no right, title, or interest in or to said estate. And denies that it is necessary to enjoin or restrain the defendant from receiving possession of the property of said estate, or any part thereof, either for the benefit of complainants, or either of them, or for any one else, or at all.

15. Answering paragraph 23, this defendant denies each and every allegation therein contained, and each and every part, and the whole thereof.

74 Defendant further answering said bill, by way of defense and as questioning the jurisdiction of this honorable court, says:

That John Sullivan died intestate at the city of Seattle, State of Washington, on the 26th day of September, 1900, leaving a will known as a nuncupative will, by the terms of which will, the defendant, Marie Carrau, was made the sole legatee and devisee of all of his property, both real and personal, of which he died seised.

That on March 8th, 1901, said nuncupative will of the said John Sullivan, deceased, was duly filed in the office of the clerk of the superior court of the State of Washington, for King county, the county in which said John Sullivan had maintained his home and

residence for many years prior thereto, and in which he resided at the date of his death, and was thereafter, by the judge of said court, in the exercise of his probate powers, duly probated, and after hearing the evidence with reference to the making and publishing of said nuncupative will, the said judge of said court then and there made and caused to be entered, a decree in said court probating said will, and that said decree established the making, publishing, and validity of such nuncupative will; and that said decree has been ever since, and is now, in full force and effect.

That said superior court as aforesaid, is and was, a court of record, and by the statutes of the State of Washington has the sole, original, and exclusive jurisdiction of the probation of wills
75 and the management of estates of deceased persons dying within its jurisdiction.

That prior to the probation of said nuncupative will, to wit, on November 19th, 1900, the superior court as aforesaid, upon petition, and after notice as required by statute, duly appointed the other defendant to this action, the administrator of the estate of John Sullivan, deceased. And that said O'Brien immediately thereafter duly qualified by filing his bond in the sum of eighty thousand dollars and the taking of the oath, as administrator of said estate, as required by statute, and assumed the duties as administrator of said estate, and then and there became, and has been ever since, and is now, the duly qualified and acting administrator of said estate; and that the said administrator, immediately after assuming the duties of said office, took possession of and filed an inventory of the property of which the said Sullivan died seised.

That on December 15th, 1900, the said O'Brien as administrator, caused to be published, notice to the creditors of said estate, as required by statute, and that one year has not elapsed since the giving of said notice to creditors of said estate, and that said estate has been ever since, said date, and is now, being administered upon by the said O'Brien as such administrator, in the superior court as aforesaid.

And further answering this defendant alleges that a large number of persons have filed *in re* estate of John Sullivan, deceased,
76 in the superior court of the State of Washington for King county, their verified claims, claiming and alleging, each of them, to be the sole heir of the said John Sullivan, deceased, as follows, to wit:

Eugene Timothy Sullivan, residing at Olympia, Washington, in person, on his own behalf, on September 3d, 1901.

Mary Sullivan, Butte, Montana, by Peter Breen, Alexander Mackel, and James A. Bradford, her attorneys, on March 12th, 1900.

Katherine Riordan, Mary Riordan, and Margaret McGrath (*née* Margaret Riordan), Cork, Ireland, by John B. Ault, June 19th, 1901.

John Sullivan and Mary Sullivan, residing at Cork, Ireland, by Roberts & Leehey and J. P. Gleason, their attorneys, April 3d, 1901. Jeremiah Sullivan, James Sullivan, Margaret Mahoney, Catherine Sweeney (spinster), John Sweeney, Patrick Sweeney, Daniel Sweeney, and Michael Sweeney, residing in Ireland, by Wilshire & Kenaga, their attorneys.

And that certain of said parties so claiming to be heirs of said John Sullivan, deceased, have given notice in writing to the administrator of said estate, and to this answering defendant; and that said claims of heirship are each and all still pending and of record in said proceeding, in said superior court.

And that these complainants, to wit, Hannah Callighan and Edward Corcoran, did, on the 20th day of June, 1901, file their verified petition in equity, and appearing by Piles, Donworth & Howe and C. H. Farrell, their attorneys, who are also complainants' solicitors here, contesting the nuncupative will in the complaint and defendant's answer described, and which petition was duly filed in the superior court of the State of Washington, for King county, being No. 32,664, and entitled "In the matter of the estate of John Sullivan, deceased, Johanna Callighan and Edward Corcoran, petitioners *vs.* Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, respondents," and caused to be issued a citation therein, under the seal of said superior court for King county, Washington, to the respondents therein, being the defendants herein, and caused said citation to be regularly served on respondents therein and these defendants, on the same day; and that this defendant and said administrator have each appeared in said action resisting said contest, and said action so as aforesaid, contesting the validity of said will, was pending at the time of the bringing of this action, and is still pending, in said superior court of King county, Washington, undetermined. And that the following named persons have also filed petitions *in re* the estate of John Sullivan, deceased, in the superior court of the State of Washington, for King county, to contest the validity of said will, to wit:

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Catherine Riordan, Mary Riordan and Margaret McGrath (*née* Margaret Riordan), filed June 20th, 1901, by their attorney John B. Ault, and which are still pending in said court.

The State of Washington, by its attorney general, filed the 20th day of June, 1901, and which is still pending in said court.

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Mary Sullivan, by James E. Bradford, her attorney, filed July 2d, 1901, which is still pending in said court.

And that each of said petitioners have caused citations to issue and be served upon said O'Brien, as administrator, and this answering defendant as such legatee, under said will; and that each of said petitions so as aforesaid contesting the validity of said nuncupative will, are still pending, undetermined in the superior court of the State of Washington, for King county; and that this answering

defendant in each of said actions contesting the validity of said will, is defending said will and her rights thereunder.

Wherefore, this defendant prays that this action be dismissed for want of jurisdiction, or in the event that this honorable court determines that it has jurisdiction of the subject matter hereof, and the parties hereto, that she have all the relief to which she may show herself entitled, and that she go hence with her costs.

JOS. W. ROBINSON, *Of Counsel.*
W. F. HAYS AND
J. P. HOUSER,
Solicitors for Defendant Marie Carrau.

79 STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being duly sworn, deposes and says: That she is the defendant named in the above-entitled cause; that she has heard read the foregoing answer and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information and belief, and that as to those matters she believes it to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 19th day of October, A. D. 1901.

EBEN SMITH,
United States Master in Chancery of and for said Court.

[Duly filed October 22, 1901.]

[Title of Court and Cause.]

Order Granting Permission to File Answer, etc.

The motion of the above-named complainants for a decree *pro confesso* upon the order *pro confesso* heretofore entered in the above-entitled suit, and the disclaimer of the defendant Terrence O'Brien, as administrator to the estate of John Sullivan, deceased, and the application of the defendant Marie Carrau for leave to file an answer in the above-entitled suit, having come on for hearing.

It is ordered that, notwithstanding the default of the said
80 Marie Carrau, heretofore entered, said Marie Carrau, upon paying to complainants' solicitors twenty-five dollars ($25.00) and forthwith filing in this court her stipulation, signed by herself and her solicitors, consenting to be bound by the order for the commission heretofore issued in the above-entitled suit, and by said commission, and that witnesses may be examined under said commission, by the commissioner therein named, in Cork, Belfast, Dublin, and

Queenstown, Ireland, upon the notice being given required by said commission, and the order therefor, is allowed to file the answer tendered by her in the above-entitled suit.

It is further ordered that the commissioner named in said commission be, and he is hereby, authorized to take depositions at any and all of said places.

It is further ordered that the taking of testimony under said commission shall not be begun until the 15th day of November, 1901, and that the notice of the taking of testimony under said commission be given by the one party to the other in the manner provided in the order for said commission and in said commission, but that witnesses may be examined under said commission in Cork, Belfast, Dublin, and Queenstown, Ireland.

It is further ordered that the complainants execute to the said Marie Carrau a bond, as security for costs, in the sum of four hundred dollars ($400.00).

October 24th, 1901.

C. H. HANFORD,
District Judge of the United States, Presiding in the Circuit Court of the United States.

[Duly filed October 24, 1901.]

81 [Title of Court and Cause.]

Order Allowing Withdrawal of Money on Deposit.

It is hereby ordered that complainant's solicitors have leave to withdraw from the registry of the court the sum of twenty-five dollars ($25.00), deposited therein for their account by the defendant Marie Carrau.

October 24th, 1901.

C. H. HANFORD, *Judge.*

Received of R. M. Hopkins, clerk of the above-entitled court, the sum of twenty-five ($25.00) in full payment under the above order.

Dated Seattle, October 24, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.

[Duly filed October 24, 1901.]

[Title of Court and Cause.]

Stipulation as to Taking Depositions.

The circuit court of the United States for the district of Washington, having made an order in the above-entitled suit, which, among other things, orders as follows:

"It is ordered that, notwithstanding the default of the said Marie

Carrau, heretofore entered, said Marie Carrau, upon paying to complainants' solicitors twenty-five dollars ($25.00), and forthwith filing in this court her stipulation, signed by herself and her solic-
82 itors, consenting to be bound by the order for the commission heretofore issued in the above-entitled suit, and by said commission, and that witnesses may be examined under said commission, by the commissioner therein named, in Cork, Belfast, Dublin and Queenstown, Ireland, upon the notice being given required by said commission and the order therefor, is allowed to file the answer tendered by her in the above entitled suit.

"It is further ordered that the commissioner named in said commission be and he is hereby authorized to take depositions at any and all of said places.

"It is further ordered that the taking of testimony under said commission shall not be begun until the 15th day of November, 1901, and that the notice of the taking of testimony under said commission be given by the one party to the other in the manner provided in the order for said commission and in said commission, but that witnesses may be examined under said commission in Cork, Belfast, Dublin and Queenstown, Ireland."

And whereas, the said Marie Carrau desires to file her answer in the above-entitled suit, on the terms and conditions stated in said order:

Now, therefore, in consideration of the said Marie Carrau being allowed to file the answer tendered by her in the above-entitled suit, she does hereby stipulate and agree with the complainants, and each of them, that she shall be and is bound by the order for the commission heretofore issued in the above-entitled suit, and by said commission, and that witnesses may be examined under said
83 commission, by the commissioner therein named, in Cork, Belfast, Dublin and Queenstown, Ireland upon the notice being given required by said commission and the order therefor.

She does further stipulate and agree that the commissioner named in said commission shall be, and he is by said order, authorized to take depositions at any and all of said places.

That the taking of said depositions shall not be begun until the 15th day of November, 1901, but that witnesses may be examined under said commission in Cork, Belfast, Dublin and Queenstown, Ireland.

And the said Marie Carrau does hereby stipulate and agree that her solicitors in the above-entitled action shall sign this stipulation and be in all respects as fully bound by this stipulation as she, the said Marie Carrau, is bound.

MARIE CARRAU.
W. F. HAYS AND
J. P. HOUSER,
Solicitors for Defendant Marie Carrau.

[Duly filed October 24, 1901.]

[Title of Court and Cause.]

Order Appointing Eben Smith Special Commissioner to Take Testimony.

This cause being at issue, it is, on motion of Piles, Donworth & Howe, and C. H. Farrell, solicitors for the above-named complainants—

84 Ordered that Eben Smith, Esq., be, and he is hereby, appointed special commissioner in the above-entitled suit, for the purpose of taking the testimony of such witnesses as may be produced before him in said suit.

It is further ordered that the parties to the above-entitled suit be, and they are hereby, allowed ninety days from this date within which to take the testimony in the above-entitled suit.

Dated Seattle, Washington, October 24, 1901.

C. H. HANFORD,
District Judge of the United States, Presiding in the Circuit Court of the United States.

[Duly filed October 24, 1901.]

[Title of Court and Cause.]

Replication.

These repliants, Hannah Calligan, otherwise known as Johanna O'Callaghan, and Edward Corcoran, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answers of the said defendants above named, for replication thereunto say, that they do*th* and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answers of the said defendants are very uncertain, evasive and insufficent in

5 law to be replied unto by these replicants, without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied to, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things these repliants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

HANNAH CALLIGAN,
Otherwise Known as Johanna O'Callaghan, and
EDWARD CORCORAN,
By PILES, DONWORTH & HOWE,
Their Solicitors.

C. H. FARRELL, *Of Counsel.*

STATE OF WASHINGTON, }
County of King, } *ss:*

Personally appeared before me James B. Howe, who, being first duly sworn on oath, says that he is one of the solicitors for the above-named complainants; that he has read the foregoing reply, knows the contents thereof and that the same is true to the best of his knowledge and belief.

JAMES B. HOWE.

Sworn to and subscribed before me, this 22d day of October, 1901.

[NOTARIAL SEAL.] GEORGE DONWORTH.
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

86 Copy of within replication received this 23d day of October, 1901.

W. F. HAYS AND
J. P. HOUSER,
Solicitors for Defendant Marie Carrau.
PRATT & RIDDLE,
Solicitors for Terrence O'Brien, as Adm. Est.
John Sullivan, Deceased.

[Duly filed October 24, 1901.]

[Title of Court and Cause.]

Bond for Costs.

Know all men by these presents, that the United States Fidelity and Guaranty Company, a corporation created and existing under the laws of the State of Maryland, and doing business as a surety company in the State of Washington, is held and firmly bound unto Marie Carrau, of the city of Seattle, State of Washington her executors, administrators or assigns, in the full and just sum of four hundred dollars ($400.00), for which payment well and truly to be made the said United States Fidelity and Guaranty Company, does hereby bind itself, its successors and assigns, jointly and severally, firmly by these presents.

In witness whereof, the said United States Fidelity and Guaranty Company hath caused these presents to be subscribed by its
87 proper officers, and its corporate seal to be hereunto affixed, this 22d day of October, 1901.

The condition of the above obligation is such, that—

Whereas, in the circuit court of the United States for the district of Washington, northern division, Hannah Calligan, otherwise known as Johanna O'Callaghan, and Edward Corcoran, as complainants, instituted a suit in equity against Terrence O'Brien, as

administrator of the estate of John Sullivan, deceased, and Marie Carrau, defendants; and

Whereas, the defendant, Marie Carrau has appeared and demanded security for costs; and

Whereas, said court has ordered that said complainants give security for costs to said Marie Carrau, in the sum of four hundred dollars ($400.00):

Now, therefore, if the said Hannah Calligan, otherwise known as Johanna O'Callighan, and Edward Corcoran, shall well and truly pay, or cause to be paid, to the said Marie Carrau, all costs which the said Marie Carrau may recover against said complainants, and each — them, in the above-entitled suit, then this obligation shall be void and of none effect; otherwise the same shall remain in full force and effect.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

[SEAL U. S. F. & G. CO.] By H. C. EWING,
JAMES B. MURPHY,
Its Attorneys in Fact.

88 The foregoing security for costs is this day approved by the undersigned.

Seattle, October 22, 1901.

A. REEVES AYRES, *Clerk.*
By R. M. HOPKINS, *Deputy.*

[Duly filed October 24, 1901.]

[Title of Court and Cause.]

Notice of Taking Depositions.

To Messrs. Preston, Carr & Gilman; Wilshire & Kenaga; Roberts & Leehey, and Lewis, Hardin and Albertson; Pratt & Riddle; Peter Breen and Alexander Mackel and James E. Bradford; John B. Ault; E. J. Brandt and Wm. H. O'Brien; to the State of Washington, Honorable W. B. Stratton and C. C. Dalton, its attorneys; Messrs. Pratt & Riddle, attorneys for Marie Carrau; Messrs. W. F. Hays and J. P. Houser, attorneys for Marie Carrau:

You and each of you are hereby notified that on the 22d day of November, 1901, at the office of the consul of the United States at Queenstown, Ireland, the undersigned will examine, in behalf of the complainants, and will take the depositions of the witnesses hereinafter named. The taking of said depositions will be adjourned from day to day and from time to time as said com-
89 missioner named in said commission, may direct. The depositions of other witnesses, in addition to those hereinafter named, will be taken from time to time. You are requested to be

present and cross-examine the witnesses offered in behalf of complainants and to introduce such evidence and take such testimony as you may desire.

This notice is hereby given you for the purpose of enabling you to be present. The names of the witnesses and their residences are as follows:

Daniel Burke, of Cork, Ireland.
Margaret Cronan, of Cork, Ireland.
Dennis McCarthy, of Cork, Ireland.
Robert Greeg, of Cork, Ireland.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainants.

Copy of the foregoing notice received and service acknowledged this 15th day of November, 1901.

LEWIS, HARDIN & ALBERTSON,
ROBERTS & LEEHEY,
Attorneys for John Sullivan and Mary Sullivan.
WILSHIRE & KENAGA,
Attorneys for Jeremiah Sullivan et al.
PETER BREEN AND
ALEXANDER MACKEL AND
JAMES BRADFORD,
Attorneys for Mary Sullivan.
C. C. DALTON,
Assistant Attorney General for the State of Washington.
90 PRESTON, CARR & GILMAN,
Attorneys for Certain Parties, as Appears by Files and Stipulation Herein, Margaret Downey and Michael Sullivan.
E. J. BRANDT AND
WM. H. O'BRIEN,
Attorneys for Cornelius Sullivan, as Appears by Files and Stipulation Herein.
PRATT & RIDDLE,
Attorneys for Terrence O'Brien, Administrator of the Estate of John Sullivan, Deceased.

STATE OF WASHINGTON, } ss:
County of King, }

Scott Calhoun, being first duly sworn, upon oath, deposes and says that he is and during all times herein mentioned was a citizen of the United States and the State of Washington, above the age of twenty-one years, not a party to or in any wise interested in the within proceeding, and competent to be a witness therein. That on the 15th day of November, 1901, affiant received the original notice

of taking depositions hereto attached, and on said 15th day of November, 1901, affiant served said notice upon — and upon John B. Ault, their attorneys, by leaving a true copy of said notice in a conspicuous place in the office of said John B. Ault, at No. 85 Sullivan building, in the city of Seattle, King county, Washington, between the hours of six in the morning and nine in the evening, to wit, at the hour of four o'clock in the afternoon of said day, said John B. Ault being absent from his said office, and there being no clerk or other person therein.

91

That affiant served said notice upon W. F. Hays, one of the attorneys for Marie Carrau, upon the 16th day of November, 1901, by delivering to and leaving with J. J. Hays, his clerk and the person having charge of his office at his said office, namely, No. 424 New York block, in the city of Seattle, King county, Washington, a true copy of said notice, between the hours of six in the morning and nine in the evening, to wit, at the hour of 11:30 o'clock of the morning of said 16th day of November, 1901, said W. F. Hays being, during all of said times, absent from his said office. And on said 16th day of November, 1901, affiant mailed postage prepaid, to J. W. Robinson, addressed to Olympia, Washington, and to J. P. Houser, addressed to Mount Vernon, Washington, true copies of said notice, by depositing the same in the postoffice at Seattle, Washington, said J. P. Houser and J. W. Robinson, being, during all of said times, attorneys of record for said Marie Carrau, in said proceeding.

SCOTT CALHOUN.

Subscribed and sworn to before me this 18th day of November, 1901.

[NOTARIAL SEAL.] ELMER E. TODD,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

[Duly filed November 26, 1901.]

92

[Title of Court and Cause.]

Notice of Entry of Decree pro Confesso.

To Messrs. Pratt & Riddle, W. F. Hays, J. P. Houser, solicitors for the above-named defendant, Marie Carrau:

You and each of you are hereby notified that the above-named complainants have, by the undersigned as their solicitors and counsel, caused to be entered in the order-book of the above-entitled court an order for a decree *pro confesso* in the above-entitled suit against the defendant Marie Carrau, and you are notified that the said complainants will proceed from this date with the above-entitled suit *ex parte*, and will, after the expiration of thirty days from this date

apply to the court for a final decree in the above-entitled suit, awarding and decreeing to the complainants, and each of them, the relief prayed for by their bill of complaint.

Dated Seattle, Washington, September 3, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.
C. H. FARRELL, *Of Counsel.*

STATE OF WASHINGTON, } ss:
County of King, }

Scott Calhoun, being first duly sworn, upon oath deposes and says: That he is, and during all times herein mentioned was, a citizen of the United States and of the State of Washington, 93 above the age of twenty-one years, not a party to or in anywise interested in the within action, and competent to be a witness therein. That he received the attached original notice on the 3d day of September, 1901, and on said 3d day of September, 1901, he duly served said notice upon W. F. Hays and J. P. Houser, solicitors for defendant Marie Carrau, by delivering to and leaving with a young lady clerk in the office of said W. F. Hays, at No. 424 New York block, in the city of Seattle, King county, State of Washington, at the hour of four o'clock in the afternoon, a true copy of said attached notice. That he also served said notice upon Messrs. Pratt & Riddle, solicitors for said Marie Carrau, on the 3d day of September, 1901, by leaving a true copy of the same at the office of said Pratt & Riddle, on the third floor of the Bailey building, in Seattle, King county, Washington, said copy being left by affiant in a conspicuous place in said office at four o'clock in the afternoon of said 3d day of September, 1901. That said copy of said notice was left at the office of Messrs. Pratt & Riddle as aforesaid, for the reason that there was no one in said office to receive the same.

SCOTT CALHOUN.

Subscribed and sworn to before me this 11th day of September, 1901.

[NOTARIAL SEAL.] JAMES B. HOWE,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

[Duly filed November 26, 1901.]

94 [Title of Court and Cause.]

Notice of Taking Depositions.

To Messrs. Preston, Carr & Gilman; Wilshire & Kenaga; Roberts & Leehey, and Lewis, Hardin and Albertson; Pratt & Riddle; Peter Breen and Alexander Mackel and James E. Bradford; John B. Ault; E. J. Brandt and Wm. H. O'Brien; to the State of Washington, Honorable W. B. Stratton and C. C. Dalton, its attorneys; Messrs. Pratt & Riddle, attorneys for Marie Carrau; Messrs. W. F. Hays and J. P. Houser, attorneys for Marie Carrau:

You and each of you are hereby notified that on the 15th day of November, 1901, at the office of the consul of the United States at Cork and Queenstown, Ireland, the undersigned will examine, in behalf of the complainants, and will take the depositions of the witnesses hereinafter named. The taking of said depositions will be adjourned from day to day and from time to time as said commissioner named in said commission may direct. The depositions of other witnesses, in addition to those hereinafter named, will be taken from time to time. You are requested to be present and cross-examine the witnesses offered in behalf of complainants and to introduce such evidence and take such testimony as you may desire.

This notice is given you for the purpose of enabling you to be present. The names of the witnesses and their residences are as follows:

Edward Corcoran, 44 Queen St., Dublin, Ireland.

95 Hannah O'Callaghan, Gillaclough cottages, off Ford St., Cork, Ireland.

Rev. John A. Daly, rector of St. Finbar, Cork, Ireland.

Rev. Mark Leonard, of St. Finbar, Cork, Ireland.

L. Cothe (or Cotter) superintendent of register of births, deaths, and marriages for district of Cork, having an office at Douglass roads, Cork.

Ellen Davidson, Crone's lane, off Evergreen street, Cork.

Elizabeth Cowlig, 114 Evergreen road, Cork.

Catherine Murphy, No. 5 Crone's lane, Cork.

Dennis Riordan, No. 2 Crone's lane, Cork.

Mary B. Davidson, No. 2 Crone's lane, Cork.

Nora O'Connell, 15 Evergreen street.

Rev. Canon Carey, parish priest, Carrigaline, County Cork.

Miss —— Bull, Bull's lunatic asylum, Black Rock road, near Cork.

R. W. Wolseley, district register of the high court of justice in Ireland, Queen's Bench division, probate district registry at Cork.

John Ragan, Cork.

Dennis Murphy, Cork.

Nora Kaily, Cork.
John Buckley, Cork.
James Flemming, Cork.
James Mooney, Cork.
Eugene Collins, Cork.
Michael Powell, Cork.
Mary Mahoney, Cork.
96 Michael Cooney, Cork.
Bridget Crowin, 12 Abbey street, Cork.
Denis Creedon, 3 Buckin-ham place, Cork.
Ellen Begley, 46 Gould street, Cork.
John Hilliard, Waterville, Passage West, in County Cork.
Denis Murphy, 3 Evergreen bldg., Evergreen of Cork.
Mary Jenkins, 73 Grand parade, Cork.
Margaret Riordan, 157 Bandon road in city of Cork.
Catherine Riordan, 7 Rockgrove terrace, Cork.
Ellen Lyons, Belfast, Ireland.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainant-.

Copy of within notice received.

LEWIS, HARDIN & ALBERTSON.

Copy of within notice received and service acknowledged this 28th day of October, 1901.

WILSHIRE & KENAGA,
Attorneys for Claimants Jeremiah Sullivan et al.
ROBERTS & LEEHEY,
For John and Mary Sullivan, Claimants.
PETER BREEN,
ALEXANDER MACKEL, AND
JAMES E. BRADFORD,
For Mrs. Mary Sullivan.
PRESTON, CARR & GILMAN.

[Duly filed November 26, 1901.]

97 [Title of Court and Cause.]

Consent of Parties to Publication of Depositions.

The commission issued out of the above-named court to Honorable Daniel Swiney, consul of the United States at Cork and Queenstown, Ireland, in the Kingdom of Great Britain and Ireland, having been returned to this court, with the depositions taken thereunder

attached to said commission, the undersigned hereby consent that said depositions be published forthwith.

Dated January 4, 1902.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.
W. F. HAYS AND
J. P. HOUSER,
Solicitors for Marie Carrau.
PRATT & RIDDLE,
Solicitors for Terrence O'Brien, as Administrator.

[Duly filed January 6, 1902.]

[Title of Court and Cause.]

Order to Publish Depositions Received from Ireland.

The commission issued out of this court in the above-entitled suit, directed to Honorable Daniel Swiney, consul of the United States in Cork, Ireland, having been returned by said commissioner, with the depositions taken thereunder attached to said commission, and filed, and the solicitors in the above-entitled suit having filed their
98 written consent that said depositions be published forthwith.

Now, therefore, it is ordered that the clerk of this court do open said commission and publish the same.

Dated January 6, 1902.

C. H. HANFORD,
Judge of the District Court of the United States, Presiding in the Circuit Court of the United States.

[Duly filed January 6, 1902.]

[Title of Court and Cause.]

Application for Extension of Time in Which to Take Testimony.

To the Honorable C. H. Hanford, judge:

The defendant, Marie Carrau, respectfully represents to your honor the following facts:

I.

That an order issued herein on October 24, 1901, upon the application of the complainants herein appointing Eben Smith, Esq., special commissioner, for the purpose of taking the testimony of the witnesses produced before him in this suit, and such application and order and the files and records with reference thereto are hereby referred to and made a part hereof.

II.

That on or about the 23d day of October, 1901, a commission was issued upon the application of complainants, to the United
99 States consul at Cork and Queenstown, Ireland, and in other places in Ireland, to wit, Dublin and Belfast, for the examination of witnesses in Ireland in this proceeding, and that soon thereafter J. B. Howe, Esq., of the law firm of Piles, Donworth & Howe, and H. C. Farrell, Esq., of attorneys for complainants herein, proceeded, together with one of the attorneys for the administrator in this action, C. A. Riddle, to Ireland for the purpose of being present at the taking of such testimony and that such testimony has been taken and returned to this honorable court, and that said attorneys who had special charge and control of the complainants' cause of action did not return to the United States until on or about the 27th day of December, 1901.

III.

That no evidence whatever was taken by the special commissioner in the city of Seattle until January 18, 1902, and that notice of the taking of such testimony before said special commissioner was not served on the attorneys for the defendants until January 15, 1902, and that on the said 18th day of January, 1902, the complainants proceeded to introduce certain testimony by resident witnesses before the said special commissioner, Eben Smith, Esq., and then and there introduced certain documentary evidence by way of exhibit but that on said date they were unable to complete the taking of such testimony on the part of the complainants and said special
100 commissioner, by reason of professional engagements before the supreme court of the State of Washington at Olympia, beginning on January 20, 1902, adjourned the hearing and further taking of testimony until January 23, 1902, at ten o'clock a. m., at which time the taking of testimony on behalf of complainants is to continue.

IV.

That this defendant is unable to determine how much further time the complainants will occupy in finishing or completing the taking of the evidence on their behalf before said special commissioner, but from statements made by the attorneys for complainants there are still a number of witnesses to be examined by said special commissioner on behalf of complainants, and that this defendant also has a large number of witnesses whose evidence is and will be material to the issues in this action and in rebuttal of the evidence given on behalf of the complainants before said special commissioner, and that the taking of such testimony on behalf of defendant will occupy a considerable time; that defendant will have in attendance upon said special commissioner for the purpose

of giving evidence herein from fifteen to twenty witnesses covering the various issues presented by the pleading in this action.

V.

That it will be impossible to complete the taking of the testimony within the time fixed by the order of this honorable court, to wit, ninety days from October 24, 1901, and that it will be necessary
101 by reason thereof for this honorable court to extend the time in which such testimony may be taken before said special commissioner.

Wherefore, this defendant prays this honorable court for an order extending for forty days the time in which said special commissioner shall take the testimony of such witnesses as may be produced before him in said suit.

MARIE CARRAU,
By W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Her Solicitors.

STATE OF WASHINGTON, }
County of King, } ss:

Marie Carrau, being sworn says that she has heard the foregoing statement praying for an extension of the time in which the special commissioner is to take the testimony of such witnesses as may be produced before him in this suit; that she knows the contens thereof and believes the same to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 20th day of January, 1902.

NELSON MACPHERSON,
Notary Public in and for the State of Washington, Residing at Seattle.

102 To the Honorable C. H. Hanford, judge:

We, the undersigned, attorneys for the administrator in the foregoing entitled *estate*, hereby respectfully join in the request for the extension of time in which to take and report the evidence herein before and by Special Commissioner Eben Smith, Esq.

PRATT & RIDDLE,
Attorneys for Terrence O'Brien, Administrator.

[Duly filed January 20, 1902.]

[Title of Court and Cause.]

Order Granting Extension of Time to Take Testimony.

Upon the application of the defendants herein for an extension of time in which Eben Smith, Esq., as special commissioner — to take the testimony of such witnesses as may be produced before him in said suit, it is ordered that the time in which such testimony shall be taken before the said special commissioner is hereby extended for a period of forty days beyond the ninety days fixed by order of this court on October 24, 1901.

Dated Seattle, Washington, January 20, 1902.

C. H. HANFORD,
District Judge of the United States, Presiding in the Circuit Court of the United States.

[Duly filed January 20, 1902.]

103 [Title of Court and Cause.]

Motion for Issuance of Commission to Take Depositions in Ireland.

Now comes the above-named defendant, Marie Carrau, and moves the circuit court of the United States, for the district of Washington, to grant a commission directed to George Lawrence, Esq., barrister at law and notary public, of No. 17 Charlotte quay, in the city of Cork, Ireland, or to Daniel Swiney, consul of the United States at Cork and Queenstown, Ireland, or to some other person to be appointed by the court, and directing the clerk of this court to issue a commission to the person appointed by the court to take the depositions of each of the witnesses, named in the annexed affidavit as witnesses, in behalf of said defendant, in the above-entitled suit, and requiring said commissioner before whom said depositions are taken to return the same to the clerk of this court. Said depositions to be taken on written interrogatories, copies of which are herewith submitted, attached hereto and made a part of this motion.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Defendant Marie Carrau.

104 [Title of Court and Cause.]

Notice of Motion for Issuance of Commission to Take Depositions in Ireland.

To Messrs. Pratt & Riddle, solicitors for Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and to Messrs. Piles, Donworth & Howe, solicitors for complainants, Hannah O'Callaghan and Edward Corcoran:

You, and each of you, are hereby notified that on the 5th day of February, 1902, at the hour of 10 o'clock a. m. of said day, the said Marie Carrau, by the undersigned, her solicitors, will move the circuit court of the United States for the district of Washington at the United States courthouse, in the city of Seattle, to grant a commission directed to George Lawrence, Esq., barrister at law and notary public of No. 17 Charlotte quay, in the city of Cork, Ireland, or to Daniel Swiney, Esq., consul of the United States, at Cork and Queenstown, Ireland, or to some other person to be appointed by the court and directing the clerk of said circuit court to issue a commission to such person appointed by the court to take the depositions of the following named witnesses on behalf of the defendant, Marie Carrau, in the above-entitled suit, a copy of said motion, affidavit and interrogatories to be propounded for and on behalf of said defendant Marie Carrau, is hereto attached and served upon you with this notice; the original of said affidavit and
105 interrogatories have been heretofore filed with said motion, in said court.

Dated this 23d day of January, 1902.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Defendant Marie Carrau.

[Title of Court and Cause.]

Affidavit of Marie Carrau.

STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn, upon oath says: That she is one of the defendants in this action. That on November —, 1901, the complainants made application to this court for a commission to take the evidence of certain persons in Ireland, and this affiant here refers to the records and files in this action and makes them a part of this her affidavit, for the purposes hereinafter set forth; that said commission issued and has been returned, and the testimony taken,

published, and this affiant here refers to such commission and the records and files in that particular, and that under said commission said evidence was taken before the United States consul at Queenstown and Cork, Ireland. That the complainants represented that under said commission, they desired to take the testimony of a large number of witnesses in Ireland, setting forth the names and
106 addresses thereof, and that at the taking of such testimony, though adjourned from time to time, the said complainants failed to produce Mrs. E. Lyons and Eugene F. Collins, parties named in said notice and commission. That the testimony of the witnesses actually taken is now before this honorable court on behalf of the complainant. That the complainants Hannah Callaghan and Edward Corcoran, testified before said commissioner to the effect that the said Callaghan was a daughter of a sister of Abby McAuliffe, and that the said Corcoran testified that he was a son of a sister of Abby McAuliffe, and that the aunt of these witnesses was the mother of said John Sullivan, deceased (it being admitted by all parties that the maiden name of the mother of John Sullivan, deceased, was Abby McAuliffe). That Henry P. F. Donegan, a solicitor of Dublin, Ireland, appeared for this affiant, for the purpose of cross-examining the witnesses presented on behalf of the complainants; that such evidence as to the relationship as hereinabove set forth is and was a great surprise to this affiant and to her solicitor, as well as to her attorneys of record in this action; that the solicitor of affiant was unable prior to the closing of the testimony on the part of the complainants under said commission to discover any evidence in rebuttal of the testimony of the two persons hereinabove named; and that immediately after the closing of said testimony, and after the commission and testimony of the witnesses so taken had been returned by the special commissioner to the above-entitled court, affiant is informed that one of her solicitors, Henry P. F. Donegan, located a number
107 of the witnesses whose names had been set forth in the application for the commission, whose testimony was claimed to be material for the complainants, but for some reason unknown to this affiant, said witnesses were not placed upon the witness-stand by said complainants and did not give testimony before said commissioner, and that after said commission and testimony had been returned to this court, affiant's solicitor, H. P. F. Donegan, discovered that several of said witnesses whose names had been set forth in the application for the commission by complainants, and who had not been examined, were prepared and would give testimony as to the alleged relationship existing between complainants and the deceased, John Sullivan, and would testify that the testimony which has been introduced tending to establish such relationship was wholly false, and that the complainants were in no way related, and are in no way related, to John Sullivan, deceased. Among those witnesses so discovered by affiant's said solicitor, is Mrs. E. Lyons; that Mrs. Lyons will testify that she had known

Abbey McAuliffe, who was the mother of John Sullivan, deceased, and has also known the Abbey McAuliffe to whom the testimony of the complainants related, and that they were not one and the same individual, but were different persons, and not in any way related; that the mother of each of the complainants was not a sister of Abbey McAuliffe, the mother of John Sullivan, deceased,
but were the sisters of another individual of the same name
108 as Abbey McAuliffe. And Mrs. Lyons will also testify that the testimony given by the complainant Hannah O'Callaghan and reported to this honorable court, is wholly false, in which she, Hannah O'Callaghan, testifies to have known and visited at the home of the said Mrs. Lyons, and having spoken "by word of mouth" with her and with Bessie Sullivan, deceased, the sister of John Sullivan, deceased, and claimed in her testimony to be a cousin of the said John Sullivan, deceased, and that she asked Mrs. Lyons to write to John Sullivan, saying, "I asked her in case she would be writing to remember me to John Sullivan." Mrs. Lyons will testify that she never conversed with the complainant Hannah O'Callaghan, does not know her, has no knowledge of her whatsoever, and that her testimony as to her alleged relationship with the deceased, John Sullivan, was and is wholly false. That Mrs. Lyons will testify that a sister of John Sullivan, deceased, was a servant in her family for twenty years, whose Christian name was Bessie, and that while at her house she went insane and was committed to the asylum for the insane, and there died, and that during the time of her said confinement in the asylum and up to the time of the death of the said John Sullivan, she had been in correspondence with the said John Sullivan, deceased, and was thoroughly conversant with his affairs, and that she knew he died leaving no relations, cousins or second cousins, as she verily believes.

Affiant further says that her solicitor also discovered, after the taking of testimony and the return of said commission, that E. F.
109 Collins, of Dublin, Ireland, named in the commission, but who was not called upon to give testimony, is an important and material witness on behalf of the defendants herein and had had an extensive correspondence and acquaintance with the said John Sullivan, deceased, which fact was known to the complainants at the time of the taking of the testimony, and that the said E. F. Collins was possessed of a large number of letters which had been written by the deceased John Sullivan to Mrs. E. Lyons and others, which were material to this case, and which fact the solicitor for defendants had learned, and it was intended by him, at the time of the taking of said depositions to use said letters in connection with the examination of said Collins and said Mrs. E. Lyons and examine said Collins and Lyons with reference to the matters referred to and suggested in said letters relating to the question of the alleged relationship between said complainants and said John Sullivan, deceased. And your affiant is informed, verily believes and so alleges the facts to be, that when the said solicitor applied to said Collins

for said letters, the said Collins was unable to find the same in his office, and after diligent search therefor, stated that the same had been taken from his office without his knowledge or consent by some one. That since said depositions have been returned to this court, some of said letters so taken from the office of said Collins, as this affiant is informed and believes, have been produced by the attorneys for the complainants. But your affiant is unable to state whether all of said correspondence have been produced.

This affiant alleges that by reason of the inability of her
110 solicitor to obtain said correspondence in Ireland, her solicitor was unable to examine said Collins or said Mrs. Lyons in regard to the matters contained therein, or to ascertain any facts as to the contents of said letters as suggesting or bearing upon other facts regarding said relationship upon which proof could and would have been taken at said time on behalf of this affiant had said letters been obtained. That this affiant alleges that such of said letters so produced will be used on the trial of this case by complainants without any opportunity being given affiant to examine said Collins or said Mrs. Lyons with reference thereto; that said Collins and Mrs. E. Lyons are thoroughly familiar with the genealogy of said John Sullivan, deceased, and replied to said Sullivan's letters; and affiant states that she is entitled to the whole of said correspondence including said letters from said Sullivan and the replies thereto, all of which she cannot obtain without an opportunity to examine said witnesses with reference thereto.

Affiant further says that James Mooney, a witness named in the application of complainants for the commission to take testimony, is also a material witness in her behalf, and the facts he knows concerning this alleged relationship has likewise been discovered by the solicitor of this affiant since the taking of said testimony in Ireland; and the said James Mooney, had he been called by complainants as a witness would have testified, and will now so testify if called as a witness in this case, that he was personally acquainted

with the deceased, John Sullivan, and he knew the said John
111 Sullivan had no relations living, and that the said John Sullivan had been in Ireland shortly before his death, and that he, the said Mooney, had frequently conversed with the said Sullivan in Ireland a short time prior to his death, and will give other and important testimony bearing upon the question of the alleged relationship of these complainants, and tending to refute the same.

Affiant further says, that the testimony so taken in Ireland under said commission on behalf of complainants pretends to furnish a copy of the church or parish records, or registration, but as a fact the deceased John Sullivan came of a Catholic family, and it has been the law of that church for two hundred years to register in each parish the birth of each child, and that in said testimony no attempt was made to furnish this registration, but merely pretends to furnish a copy of the marriages of the parish in which the complainants claim to have lived; and affiant is further informed, be-

lieves, and alleges the fact to be that the keeper of such registration, L. Cother (or Cotter), and Rev. Canon Carey, the parish priest of the parish of Carrigaline, will be able to testify from said records and other sources, and show that John Sullivan, deceased, is no relation to the complainants whatsoever, and will likewise be able to show therefrom, and by other records and evidence, that John Sullivan, deceased, was not in fact identified in the testimony that has been given pursuant to said commission. That this affiant, her solicitor, and attorneys, could not possibly have known what evidence the com-
plainants were to present or would present at the taking of said
112 testimony under said commission, and they could not have known what such evidence would be until the same was given, and that since the closing of said testimony they have exercised every diligence to locate and discover witnesses who it was claimed by the complainants knew something of the relatives of the said John Sullivan, deceased; that affiant had a right to expect that the complainants would call all the witnesses whose names were set forth, as being material witnesses to the complainants' action, and that when they did not call these witnesses the solicitor in Ireland of this affiant immediately took steps to discover their whereabouts and to determine why the complainants did not call such witnesses to testify, and upon information and belief this affiant states the fact to be that the witnesses not called were not subpœnaed or sworn on behalf of the complainants, for the reason that said witnesses in giving their testimony would have disproved the alleged relationship existing between the said complainants and the said John Sullivan, deceased, and that that was the reason, and the only reason, why they were not called to testify. And this affiant and her solicitor did not know of this evidence in time to have the same taken under the commission heretofore issued, and could not have discovered the same by any diligence on their part; and that the evidence of the said Mrs. E. Lyons, E. F. Collins, James Mooney, Rev. Canon Carey and L. Cother (or Cotter) is wholly new discovered evidence, which could not have been discovered prior to the closing of
the testimony taken under said commission, and that the de-
113 fendants cannot rebut evidence given by the complainants herein by any other witnesses known to them, except the said above-named witnesses whose addresses are hereinafter set forth.

That this affiant cannot safely proceed to trial without the benefit of the testimony of the witnesses herein-above named, and that such witnesses, each and all, reside outside of the United States, and cannot be present at the final hearing and trial of this action; and this affiant presents herewith interrogatories to be propounded to each of said witnesses.

MARIE CARRAU.

Subscribed and sworn to before me this 25th day of January, A. D. 1902.

[NOTARIAL SEAL.] FRANK H. KNAPP,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Title of Court and Cause.]

Interrogatories.

Interrogatories to be propounded to and answered by Rev. Canon Carey, parish priest, Carrigaline, County Cork.

Interrogatory 1. Give your name, address, age and occupation.

2. How long have you resided there and thus engaged?

3. If you have stated you are the custodian, or superintendent of registrar of births, death-, and marriages, for district of Cork,
114 or parish priest at Carrigaline, county of Cork, state whether you have under your control such register from the year A. D. 1700 or later, down to the present time.

4. If your answer be that you have such register, will you produce it, and if so is it the original?

5. Please refer to said register and state if you can whether there is an entry therein of the birth of Abbe McAuliffe, if so, when was she born, and state in the same connection who her father and mother were, and what was her mother's maiden name, and when was she born, and what was her father's given name, and when was he born, and whether the said Abbe McAuliffe had any brothers or sisters if so when were each born.

6. Please state, if you can, from said register, giving page thereof, whether you have a record of the birth of Peter Sullivan if so, when was he born, and when, if at all, was he married, and to whom?

7. If your answer to interrogatory 6 be that Peter Sullivan married Abbe McAuliffe, state whether John Sullivan, deceased, referred to in this proceeding was a son of the said Peter Sullivan and Abbe Sullivan, and what brothers or sisters did he have, if any, also children of the said Peter Sullivan and Abbe Sullivan (*née* McAuliffe)?

8. If you have stated in answer to interrogatory 7 that Peter Sullivan was the name of the father of John Sullivan, deceased, and Abbe Sullivan was the name of his mother, state whether or not the said Peter Sullivan was married before or after his mar-
115 riage with Abbe McAuliffe; if so, what was the name of such wife? State all the facts as appear upon said register.

9. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this action, or either or any of them, or that may be material to the subject *to* this your examination, or the matters and questions in dispute in this action? If you answer "yes," then please set forth the same fully and at large in your answer to this interrogatory.

[Title of Court and Cause.]

Interrogatories.

Interrogatories to be propounded to and answered by Mrs. E. Lyons, of No. 8, Lower Cres-ent, Belfast, Ireland.

Interrogatory 1. Give your name, address, age, and occupation.

2. Were you acquainted and if so for how long with John Sullivan, who died in Seattle, Washington, on September —, 1899?

3. State whether or not he ever visited at your home, and if so how often, and when, and how long did he remain?

4. State whether or not you knew any member of the family of John Sullivan, deceased, and if so who, how long and where?

5. State whether or not you ever had any correspondence with John Sullivan, deceased, during his lifetime, and if so, from
116 where did he write you and to what place did you address your letters?

6. Have you any of his letters? And if you preserved them and have not them now, what did you do with them?

7. State what became of the brothers and sisters, if any he had, of the said John Sullivan?

8. State whether or not you ever were acquainted with Hanna Callaghan, one of the complainants in this action, whose address is given at "Gillaclough cottages, off Ford street, Cork, Ireland"?

9. This lady, in testifying before the commissioner, appointed herein to take testimony, in Ireland, on the 19th day of November, 1901, states, in substance, that she once had a conversation with you at a time when you were writing John Sullivan, at Seattle, Washington, and that she stated to you that the said John Sullivan was her cousin, and that she requested you at that time to write the said Sullivan that she was inquiring about him, or words to that effect; you may state whether or not that, or any other conversation took place, and if it did, give it in full.

10. Hannah Callaghan and Edward Corcoran, the complainants in this action, have each testified that the mother of each was a sister of Abbe McAuliffe, and that Abbe McAuliffe, their aunt, was the mother of John Sullivan, deceased; you may state whether or not that is true, and if you know, state whether or not, Abbe McAuliffe, the mother of John Sullivan, was the same
117 individual as the Abbe McAuliffe who was a sister of the mother of these complainants.

11. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this action, or either or any of them, or that may be material to the subject *to* this your examination, or the matters and questions in dispute in this action? If you answer "Yes," then please set forth the same fully and at large in your answer to this interrogatory.

[Title of Court and Cause.]

Interrogatories.

Interrogatories to be propounded to and answered by E. F. Collins, of Temple chambers, Eustace street, Dublin, Ireland.

Interrogatory 1. Give your name, address, age and occupation.

2. Were you acquainted, and if so how long, with John Sullivan, who died in Seattle, Washington, on September —, 1899?

3. State whether or not he ever visited at your home, and if so, how often and when, and how long did he remain?

4. State whether or not you knew any member of the family of John Sullivan, deceased, and if so, who, and how long and where?

5. State whether or not you ever had any correspondence
118 with John Sullivan, deceased, during his lifetime, and if so, from where did he write you, and to what place did you address your letters?

6. Have you any of his letters? And if you preserved them and have not them now, what did you do with them?

7. State what became of the brothers and sisters, if any he had, of the said John Sullivan?

8. State whether or not you were ever acquainted with Hannah O'Callaghan, one of the complainants in this action, whose address is given at "Gillaclough cottages, off Ford street, Cork, Ireland"?

9. In answer to interrogatory No. 6, you state that you have received letters from John Sullivan, deceased, and have had other letters of his to other persons in your possession, but at the present time you are not possessed of the same, state how, and in what manner you were dispossessed of them, and who, if you know, took them? State fully.

10. State whether you have any copies of any such letters in your possession, or memoranda, showing what letters you had from the said John Sullivan, and to whom they were written, when written, and the contents of the same as near as you can give it?

11. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this action, or either or any of them, or that may be material to the subject *to* this your examination, or the matters and questions in dispute in this action? If you answer "Yes," then please set forth the same fully and at large in your answer to this interrogatory.

119 [Title of Court and Cause.]

Interrogatories.

Interrogatories to be propounded to and answered by James Mooney, of Cork, Ireland.

Interrogatory 1. Give your name, address, age and occupation.

2. Were you acquainted, and if so, for how long, with John Sullivan, who died in Seattle, Washington, on September —, 1899?

3. State whether or not he ever visited at your home, and if so how often and when and how long did he remain?

4. State whether or not you knew any member of the family of John Sullivan, deceased, and if so, who, how long and where?

5. State whether or not you ever had any correspondence with John Sullivan, deceased, during his lifetime, and if so, from where did he write you, and to what place did you address your letters?

6. Have you any of his letters? And if you preserved them and have not them now, what did you do with them?

7. State what became of the brothers and sisters, if any he had, of the said John Sullivan?

8. State whether or not you were ever acquainted with Hannah Callaghan, one of the complainants in this action, whose address is given at "Gillaclough cottages, off Ford street, Cork, Ireland"?

9. If you have answered interrogatory No. 3 that you have
120 met and talked with John Sullivan, deceased, in Cork, Ireland, state what conversation you had with, or statements made by him, with reference to his having any relatives, cousins or otherwise, living—state fully.

10. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this action, or either or any of them, or that may be material to the subject *to* this your examination, or the matters and questions in dispute in this action If you answer "Yes," then please set forth the same fully and at length in your answer to this interrogatory.

[Title of Court and Cause.]

Interrogatories.

Interrogatories to be propounded to and answered by L. Cother (or Cotter), Douglass roads, Cork, Ireland.

Interrogatory 1. Give your name, address, age and occupation.

2. How long have you resided there and thus engaged?

3. If you have stated you are the custodian or superintendent of registrar of births, deaths and marriages, for the district of Cork,

state whether you have under your control such register from the year A. D. 1700 or later, down to the present time.

4. If your answer be that you have such register, will you produce it, and if so, is it the original?

121 5. Please refer to said register, and state, if you can, whether there is an entry therein of the birth of Abbe McAuliffe; if so, when was she born, and state in the same connection who her father and mother were, and what was her mother's maiden name, and when was she born and what was her father's given name, and when was he born, and whether the said Abbe McAuliffe had any brothers and sisters, if so, when were each born?

6. Please state, if you can, from said register, giving page thereof, whether you have a record of the birth of Peter Sullivan; if so, when he was born, and when, if at all, was he married, and to whom?

7. If your answer to interrogatory 6 be that Peter Sullivan married Abbe McAuliffe, state whether John Sullivan, deceased, referred to in this proceeding, was a son of the said Peter Sullivan and Abbe Sullivan, and what brothers or sisters did he have, if any, also children of said Peter Sullivan and Abbe Sullivan (*née* McAuliffe).

8. If you have stated in answer to interrogatory 7 that Peter Sullivan was the name of the father of John Sullivan, deceased, and Abbe Sullivan was the name of his mother, state whether or not the said Peter Sullivan was married before or after his marriage with Abbe McAuliffe, if so what was the name of such wife? State all of the facts, as appear upon said register.

9. Do you know, or can you set forth any other matter of thing which may be a benefit or advantage to the parties at issue in this action, or either of them, or that may be material to the subject of this your examination, or the matters and questions in dis-

122 pute in this action? If you answer "Yes," then please set forth the same fully and at length in your answer to this interrogatory?

Copy of within motion, affidavit, and interrogatories, etc., received, and due service of same acknowledged this 25th day of January, 1902.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Attorneys for Complainants.

[Duly filed January 25, 1902.]

[Title of Court and Cause.]

Affidavit of C. H. Farrell.

STATE OF WASHINGTON, } ss:
County of King, }

C. H. Farrell, being first duly sworn, on oath deposes and says: I am well acquainted with John B. Wright, who has made an affidavit in this case, and accompanied him to the residence of Mrs. E. Lyons in Belfast, Ireland. We called upon Mrs. Lyons for the purpose of obtaining information for the purpose of establishing that John Sullivan of Seattle was the same John Sullivan who had written to Mrs. Lyons. Deponent, prior to the examining of the witnesses under the commission issued on the application of the complainants for the examination of witnesses in Ireland, had learned that there were in existence a number of letters which had been written by John Sullivan of Seattle to Mrs. E. Lyons. We were informed by Mrs. Lyons that she had letters in her pos-
123 session from John Sullivan of Seattle which were not of a private nature, but were valuable only for the purpose of establishing that John Sullivan of Seattle was a brother of Bessie Sullivan, who had been a servant in the employ of Mrs. E. Lyons, and who had been placed by Mrs. Lyons in Bull's asylum, where she died, and that said letters could be obtained by calling upon her solicitor Eugene F. Collins, whose office and residence were in Dublin, whereupon deponent and said John B. Wright called upon Eugene F. Collins at his office in Dublin, and were informed by said Collins that he had in his possession letters written by John Sullivan, and that he could obtain from Mrs. Lyons other letters written by Sullivan to her. He also had some letters from John Sullivan to himself. Said Collins stated that these letters were not of a private nature, and were valuable only for the purpose of establishing that said Sullivan of Seattle was a brother of Bessie Sullivan, but refused to allow either deponent or said Wright to read any of said letters until they paid to said Collins the sum of twenty pounds and agreed to pay said Collins the further sum of twenty pounds when complainants should recover in the above-entitled suit. The first-mentioned sum was paid to said Collins, who thereupon agreed to obtain from Mrs. Lyons the rest of the letters written by Sullivan to her, and all of said letters were to be turned over by said Collins to deponent for use as evidence in the above-entitled suit. Deponent and John B. Wright then cabled the name of said Collins to Piles, Donworth & Howe as a witness to be examined on behalf of
124 complainants in the above-entitled suit. Deponent knows that it is not true that any of the persons named in the affidavit of said Marie Carrau were discovered by her solicitor after the taking of the depositions was closed. Deponent knows that the

solicitor of Marie Carrau knew of the whereabouts of each and every one of said witnesses long before the first day that evidence was taken under said commission.

Deponent further deposes and says that the agreement under which the said Collins was paid the sum of twenty pounds above mentioned has been introduced in evidence at the hearing before the Honorable Eben Smith, and by said agreement said Collins bound himself to furnish to complainants all letters and information which the said Collins then had in regard to the Sullivan family, and all letters and information which he might thereafter obtain which might be in any way, shape or form connected with this case.

And deponent further states that said Eugene F. Collins gave to the said John B. Wright in deponent's presence a certificate from said Collins that the following language was contained in a letter written by Mrs. E. Lyons from Belfast to the said Eugene F. Collins:

"I remember seeing a woman long ago. She was a cousin of Sullivan's. I think she lived in Sunday's Well, and she asked me at one time to send a kind message to Sullivan for her, which I did, but I haven't the faintest recollection of her name."

Deponent further says that said James Mooney was a clerk in the office of Wynne & Wynne, solicitors, in Cork, who are the
125 agents of Eugene F. Collins, of Dublin, and that the said Eugene F. Collins of Dublin was in constant written communication with Mr. W. F. Hayes of Seattle, solicitor for Marie Carrau, some two or three months prior to the taking of this testimony in Ireland; and deponent further stated that he was informed by the said Eugene F. Collins that Mrs. E. Lyons was a relative of his, Collins', and that she had given him all the information within her knowledge, with the exception of the contents of the letters written by John Sullivan to Mrs. Lyons which Mrs. Lyons then had in her possession, and which the said Collins agreed to procure for deponent, and said John B. Wright.

Deponent further states that the names of Mrs. E. Lyons, James Mooney, Eugene F. Collins, Canon Carey and L. Cother were all served upon the solicitor for Marie Carrau long previous to the taking of said testimony before said commissioner.

C. H. FARRELL.

Sworn to and subscribed before me this 5th day of February, 1902.

[NOTARIAL SEAL.] ELMER E. TODD,
Notary Public in and for the State of Washington, Residing at Seattle.

Copy of within affidavit received this 5th day of February, 1902.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Marie Carrau.

[Duly filed February 7, 1902.]

126 [Title of Court and Cause.]

Affidavit of James B. Howe.

STATE OF WASHINGTON, } ss:
County of King, }

James B. Howe, being first duly sworn, on oath deposes and says: I am one of the solicitors for the above-named complainants in the above-entitled suit. I have read the affidavit of Marie Carrau, sworn to in the above-entitled suit on the 25th day of January, 1902, for the purpose of an application for a commission to be issued out of the above-entitled court to take the deposition- of Ellen Lyons, E. F. Collins, James Mooney, Rev. Canon Carey and L. Cother, in Ireland. I attended the taking of the depositions of the witnesses under the commission issued in above-entitled suit, on the application of the above-named complainants, which said commission was issued to the Hon. Daniel Swiney, consul at Cork and Queenstown, Ireland. It is not true, as stated in the affidavit of Marie Carrau, that after the testimony of the witnesses examined in behalf of the complainants under said commission had been taken, Henry P. F. Donegan, one of the solicitors for the defendant, Marie Carrau, located the above-named witnesses, or any of them. I know from my personal knowledge that the said Henry P. F. Donegan knew where the said witnesses and each of them resided, long before the commission for the taking of testimony in behalf of complainants was closed, and the said Donegan had ample opportunity before the
127 closing of said commission to have called said witnesses and any of them whom he might have desired to call to testify in behalf of said defendant Marie Carrau. The witness, Rev. Canon Carey, was called as a witness by complainants, was examined by complainants and cross-examined by the defendant Marie Carrau. He was then called as a witness for Marie Carrau and examined by said Donegan, and by reference to the testimony taken under said commission it will be seen that said Canon Carey was fully examined as to everything within his knowledge, and that he was also fully examined as to all matters to be found in the records of his parish. The said Eugene F. Collins was present for two days while the witnesses in behalf of complainants were being examined under said commission. The said Collins appeared upon the record in behalf of Mary Sullivan, of Montana, under a stipulation which provided that any person signing said stipulation, who had appeared in the matter of the estate of John Sullivan, deceased, in the superior court of the State of Washington might cross-examine any of the witnesses produced by the complainants under said commission. The said Collins is a resident of Dublin, Ireland, and while deponent was in Ireland he was informed and believes that the said Collins was the agent in Dublin for the said Donegan, the said Donegan

being a solicitor residing in Cork. The said Collins, while attending at the taking of the depositions of complainants' witnesses, was in close and constant communication with the said Donegan, and on the 19th day of November, 1901, the said Collins dined at
128 the Victoria hotel in Cork, with the said Donegan and with Mr. C. A. Riddle.

It is true that the said Collins was named by complainants in their notice for the taking of depositions of witnesses, as one of the witnesses to be examined by them, and the reason for so doing was that the said Collins had in his possession certain letters which had been written, as deponent is informed and believes, by John Sullivan, of Seattle, Washington, to Mrs. E. Lyons. That the said Collins had agreed with Mr. C. H. Farrell that in consideration of the payment to the said Collins of the sum of twenty pounds, and of the further sum of twenty pounds when complainants had recovered in the above-entitled suit, the said Collins would procure from said Lyons the letters written by said John Sullivan to her. The only reason for examining the said Collins was to establish by him the fact that the letters had been turned over to him by Mrs. Lyons, and that they were in the handwriting of John Sullivan, and that the said Collins had corresponded with the said John Sullivan in reference to taking out letters of administration on the estate of the sisters of said John Sullivan, to wit: Ellen Silva and Bessie Sullivan. Deponent has been informed and believes that the said Collins would not allow any of said lettes to be read until he had been paid the sum of twenty pounds. Certain of said letters deponent is informed and believes were turned over by said Collins to John B. Wright at the time of the making of the said contract by which the said Collins was to receive said sums of money above mentioned. Thereafter other letters
129 were turned over by said Collins to said Wright, and in Queenstown, on the 19th day of November, 1901, the said Collins in the presence of said Wright, Arthur Julian, Esq., and deponent, stated that he had no further use for said letters, that he knew they would have to go to the United States, and he authorized the said John B. Wright to retain possession of them. During the taking of the testimony in the said commission, deponent became convinced that the said Collins was acting in collusion with the said Donegan, and it was apparent to deponent that the said Donegan and Collins were very anxious that the said Collins should be called as a witness in behalf of complainants. The said Collins stated to deponent that he had made a search for information, which search was outside of his contract above mentioned, and that he thought he should be paid the sum of five pounds for the result of his search. Deponent agreed to pay the said Collins for the information furnished by the said Collins, which information was a census report showing the residence of Peter and Abina Sullivan and of their three children. Deponent found that the search was of no value to deponent, inasmuch as the residence of said parties was overwhelm-

ingly established by a large number of witnesses, but deponent found that the said Collins was using said census report for the purpose of cross-examining deponent's witnesses, and the same information which the said Collins had sold to deponent for the sum of five pounds he furnished to the said Donegan. Deponent was unwilling to trust the said Collins upon the witness stand, because
130 deponent did not believe that said Collins would testify truly, but deponent was perfectly willing to waive the requisite notice of the examination of said Collins and allow the said Collins to be examined in behalf of the defendant Marie Carrau, if her solicitors desired to examine him. About the time of the closing of the commission, the said Donegan made a demand on deponent for the return of the letters which the said Collins had furnished to counsel for complainants. Deponent declined to return said letters or any of them, because deponent was satisfied that the object of the said Collins in obtaining the control of said letters was to force deponent to call said Collins as a witness, while deponent knew that said letters could be shown to be in the handwriting of John Sullivan by witnesses in Seattle. It is untrue, therefore, that the said Donegan did not know of the whereabouts of Collins and did not know that the letters referred to were in the possession of deponent, and deponent believes the fact to be that the said Donegan was furnished by said Collins with copies of said letters, for by reference to the record of the court *will* find that said Donegan charges that deponent wrongfully appropriated certain original letters which were written by the deceased, Sullivan, to Mrs. Lyons, and he asks that said letters be ordered by the court to be "impounded in court in order that they should not remain in the hands of the persons whose interest it is they should not appear in evidence." The said Donegan especially refers to letters dated, respectively, the 30th of May, 1900, and the 10th of September, 1900.

131 Deponent further deposes and says that on the 18th day of January, 1902, on the taking of testimony before Honorable Eben Smith, as examiner in the above-entitled suit, Mr. Hays, one of the solicitors for Marie Carrau, demanded of complainants the production and return to the respondent of all the letters and correspondence between the deceased John Sullivan and Eugene F. Collins, solicitor, of Dublin, Ireland, and Mrs. Lyons, and in making said demand Mr. Hays stated: "This demand is founded upon an alleged agreement entered into between Messrs. Howe and Wright, who, I understand, is of counsel for complainants, by the terms of which agreement these letters upon the completion of taking testimony in Ireland were to have been restored to said Eugene Collins, and until said letters are returned *to him* on behalf of the respondent and the said Collins who was a solicitor employed by the respondent to appear in the taking of testimony in this case, that those letters be here and now produced." That said letters were introduced in evidence by the complainants on the hearing before Honorable Eben Smith, and said letters were all objected to

by counsel for Marie Carrau. Deponent demanded of Mr. Hays that he produce any letters from Mr. Collins to him authorizing him to demand that said letters be turned over to the said Hays for said Collins, and Mr. Hays declined to file said letters from said Collins on the ground that said letters were privileged, the same relating to matters of a confidential nature, as a communication between attorneys with reference to this litigation.

132 Deponent further deposes and says that he believes that the said Collins was actually in the employ of the said Marie Carrau at the time of the taking of the depositions in Ireland, and that he gave to the said Donegan all of the facts connected with the said John Sullivan of which said Collins had any knowledge, but that those facts were limited entirely to the correspondence between the said John Sullivan and the said Collins and such facts as said Collins had learned from the letters written by Sullivan to Mrs. Lyons.

Deponent further deposes and says that on the 21st day of November, 1901, at the office of Messrs. Wynne & Wynne, solicitors, in Cork, Ireland, deponent and John B. Wright had a conversation with James Mooney, one of the persons for whose examination Marie Carrau desires a commission to issue, and that in said conversation said James Mooney stated that he had been called on by the said Henry P. F. Donegan, and that he had stated to the said Donegan all of the facts which he knew connected with the said Sullivan. The said Mooney is a witness employed in said solicitor's office, which office is on the same street with that of the said Donegan. Deponent was also informed, and he believes, that Mr. Riddle was introduced to one of the firm of Wynne & Wynne by the said Eugene F. Collins. Deponent was informed while in Ireland, and he believes it to be true, that the said firm of Wynne & Wynne were the agents in Cork of the said Eugene F. Collins. The witness L. Cother is the registrar of births and deaths in Cork. Deponent examined the books of the said Cother

133 for the purpose of ascertaining whether the deaths of Peter and Abina Sullivan were recorded, and had the said Cother make a search, but the said Cother was unable to find any record of the death of either Peter or Abina. The said Cother, however, was able to find the record of the deaths of Ellen Silva and Bessie Sullivan, and when the name of the said Cother was given as a witness to be examined by complainants, complainants desired to examine him for the purpose of proving said deaths, but the said deaths and the time of said deaths were established by a large number of witnesses, and for that reason and for that reason only, the said Cother was not examined as a witness by complainants. The office of the said Cother is a public record office in the city of Cork, accessible to anyone. The said Donegan is a solicitor resident in Cork, and deponent believes that he is thoroughly familiar with the means of obtaining any information which the records of said office could give. Said office was accessible to said Donegan during the whole

time the testimony was being taken in the above-entitled suit in Ireland. Deponent was informed and he believes that the office of registrar of births and deaths was not established in Cork until about thirty or thirty-five years ago, and therefore it would have been impossible to have found any record of the birth of Peter and Abina Sullivan, or of any of their children in said office. The name of each of said witnesses was furnished to counsel for Marie Carrau about the 26th or 27th of October, and they had ample time
134 and opportunity to obtain from each and every one of said witnesses all that said witnesses might know concerning John Sullivan or any other fact in the case. Deponent further deposes and says that it is not true, as stated in the affidavit of said Marie Carrau, that it was admitted by all parties that the maiden name of the mother of John Sullivan, deceased, was Abby McAuliffe; on the contrary, every point was contested which complainants introduced evidence upon to establish the genealogy of John Sullivan and his relationship to the complainants in the above-entitled suit. It is not true, as stated in the affidavit of Marie Carrau, that Mrs. Lyons was discovered by affiant's solicitor and that said discovery was made after the commission had been returned to this court. On the contrary, the said Donegan at all times knew that Mrs. Lyons was a resident of Belfast, and that the said Eugene F. Collins was her solicitor and the testimony of the said Hannah Callaghan in reference to a conversation had between her and Mrs. Lyons was given by the said Hannah Callaghan on the 19th day of November, 1901, and the commission was not returned by the commissioner until the 7th day of December, 1901. It was unnecessary for complainants to take the deposition of Mrs. Lyons, for the reason that all that complainants expected to prove by said Mrs. Lyons was the fact that Bessie Sullivan was a servant of said Mrs. Lyons, that she was a sister of John Sullivan, that she had lost her mind and had been placed in an asylum, and that John Sullivan had written to said Mrs. Lyons and her brother in law in regard to the care and support of his said sister, and that the letters which the said
135 Mrs. Lyons had delivered to Eugene F. Collins and which Eugene F. Collins had delivered to John B. Wright were letters written by John Sullivan of Seattle.

Deponent has read a statement furnished to John B. Wright by said Eugene F. Collins, of what the said Eugene F. Collins claimed Mrs. Lyons would testify to, which said statement the said Collins informed deponent he would have Mrs. Lyons make and he, the said Collins, would then send it to the said John B. Wright and the said statement is attached to the affidavit of said John B. Wright made in the above-entitled suit. It is not true, as stated in the affidavit of Marie Carrau, that her solicitor was unable to examine said Collins or Mrs. Lyons without obtaining the letters which the said Collins had delivered to said John B. Wright, and never at any time did the said Collins or anyone else demand the production of said letters for said purpose, but the demand was made upon the

ground that the said Collins desired to retain possession of said letters, and that he was afraid that the letters would not be put in evidence. Deponent further deposes and says, that it is not true that complainants did not produce the register- of the parishes showing the births of members of the Sullivan family, and of the ancestors of complainants. On the contrary, the said registers were produced, were thoroughly examined, and all the facts and circumstances shown by said registers connected with the Sullivan family and with the families of each of the complainants, were put in evidence. It is not true that either Canon Carey or L. Cother can testify anything whatsoever concerning the family of John
136 Sullivan, as to what facts are shown by the records of their respective offices, and there are no facts shown by said records other than those above mentioned by deponent, so far as deponent is informed and believes, and his information is based upon a personal examination of said records and on the testimony of Canon Carey and on a conversation which deponent had with the said L. Cother.

Deponent further deposes and says, that on the 28th day of November, 1901, the said Donegan wrote to deponent and stated that he would not call any witnesses in behalf of Marie Carrau, and requested deponent to notify Mr. Riddle to that effect. The commission was not forwarded to the United States until the 7th day of December, 1901, and no witness was examined after the 28th of November, 1901. In a statement filed by said Donegan the said Donegan has made the following statement in regard to the closing of the commission, and return by the consul. He stated that counsel for complainants had agreed that the commission should not be closed until some date after the 7th day of December. Not only was there no such agreement, but on the 6th day of December, the said Donegan was to have furnished the commissioner with a statement in regard to an occurrence taking place during the progress of the examination of Hannah Callaghan. The commissioner waited until after three o'clock for said Donegan to furnish him with said statement, but the said Donegan did not appear. Mr. Wright then notified said Donegan that counsel for complainants would attend on the com-
137 missioner at Queenstown to have the commission closed at 10 o'clock on the 7th of December. Counsel for complainants did so attend, and the commission was closed at that time. It is not true that any testimony which any of the above witnesses could give could not have been obtained by Marie Carrau by the exercise of diligence on her part or on the part of her solicitor. On the contrary, her solicitor had ample time to ascertain anything which any and all of said witnesses could testify to, and deponent believes that the application for this commission is an excuse on the part of Marie Carrau to delay the bringing of this suit to a hearing as long as possible, and that it is not made in good faith.

JAMES B. HOWE.

Sworn to and subscribed before me this 4th day of February, 1902.

[NOTARIAL SEAL.] ELMER E. TODD,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within affidavit received this 4th day of February, 1902.

W. F. HAYS,
Solicitor for Marie Carrau.

[Duly filed February 7, 1902.]

138 [Title of Court and Cause.]

Affidavit of Henry S. Noon.

STATE OF WASHINGTON, } ss:
County of King, }

Henry S. Noon, being first duly sworn, on oath deposes and says: I am an attorney and counselor at law, and during the absence of J. B. Ault I have had charge of the case of the Riordan claimants to the estate of the late John Sullivan, deceased. Among the papers in my custody was an affidavit of Alfred Blake, Esq., a solicitor of Cork, Ireland, in which said affidavit the said Alfred Blake referred to the letter of Mrs. E. Lyons, dated the 12th of March, 1901, addressed to said Blake, which letter is hereto annexed. The original affidavit of the said Alfred Blake was, I believe, returned to him; at any rate it cannot now be found.

HENRY S. NOON.

Sworn to and subscribed before me this 4th day of February, 1902.

[NOTARIAL SEAL.] ELMER E. TODD,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

8 LOWER CRESCENT, BELFAST, *12th March*, 1901.

DEAR MR. BLAKE: I am sorry I cannot give you very much information concerning the family of Bessie Sullivan, but I shall, with pleasure do my best. Bessie lived with my hus-
139 band's family for a good many years—I do not know what time she went to them, but I fancy it must have been in the year 1853 or 1854—she was there when I was married & then lived on with me until the year 1877—the reason she left us was that her mind got weak & she had to be removed to the asylum. She died at Dr. Bull's on the first May, 1886. Her father, mother & sister lived in Evergreen street, they all died while Bessie was with me—I think the father's name was Peter. He was employed at Lane's

brewery. The sister was a widow. Her name was Ellen Silva. I do not know for certain what the mother's name was. I think somebody told me it was McAuliffe. The brother, John Sullivan, who died last September, at Seattle, commenced life by being a sailor, and then settled down in Seattle, U. S. A. There were no other brothers or sisters, & I never heard Bessie speak of uncles or aunts. Ellen Silva had no family—I think I have answered all your questions, and if there is anything else I can do I am at your service. I remain,

Yours truly, ELLIE LYONS.

P. S.—If you know of the particulars of poor Mr. Sullivan's death I will be so grateful to you if you would tell me. I have taken such an interest in him for years, and he was in such good form when he was here in the summer. I got his last letter on the 23rd S-pt. and I believe he died on the 26th. I think his death must have
140 been sudden. At the time he died he was about starting for Paris. He was such a good business man it is a wonder he hadn't a will made. E. L.

Referred to in the amdavit of Alfred Blake, solicitor.

Sworn before me this 16th day of April, 1901.

ALFRED BLAKE.

Attest 16th April, 1901.

[SEAL U. S. CONSULATE.] DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

Copy of within affidavit received this 5th day of February, 1902.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Marie Carrau.

[Duly filed February 7, 1902.]

[Title of Court and Cause.]

Affidavit of John B. Wright.

STATE OF WASHINGTON, } ss:
County of King, }

John B. Wright, being first duly sworn, on oath deposes and says: I have read the affidavit of Marie Carrau, made in the above-entitled case for the purpose of having a commission issue to examine Eugene F. Collins, Mrs. E. Lyons, Rev. Canon Carey, L. Cother and James Mooney. I was present at the examination of all of
141 the witnesses under the commission issued on the application of complainants for the examination of witnesses in Ireland.

The depositions of said witnesses were taken before Honorable Daniel Swiney, the consul of the United States, at Cork and Queenstown. The taking of said depositions began on the 15th day of November, and after a few questions were put to Edward Corcoran, the hearing was adjourned until the 18th day of November, 1901. On said last-named date Marie Carrau was represented by Henry P. F. Donegan, a solicitor, of Cork, Ireland. The above-named Eugene F. Collins also appeared as solicitor in behalf of one Mary Sullivan under a stipulation signed by various claimants of the estate of John Sullivan, deceased. The said Eugene F. Collins was present at the examination of complainants' witnesses on the 18th and 19th of November, 1901, and he was at all times in close and constant communication with said Donegan, the solicitor for Marie Carrau. Deponent was informed while in Ireland, and he believes, that the said Collins was the agent in Dublin of said Donegan. Deponent, prior to the taking of the depositions of said witnesses, had learned that there were in existence a number of letters which had been written by John Sullivan to Mrs. E. Lyons. Deponent called upon Mrs. Lyons for the purpose of obtaining information for the purpose of establishing that John Sullivan, of Seattle, was the same John Sullivan who had written to Mrs. Lyons. Mrs. Lyons referred deponent to Eugene F. Collins, her solicitor and a relative.

142 The said Collins told deponent that he had in his possession letters written by John Sullivan, and that he could obtain from Mrs. Lyons other letters written by Sullivan to her. He also had some letters from John Sullivan to himself. The letters were not of a private nature, but were valuable only for the purpose of establishing that John Sullivan of Seattle was a brother of Bessie Sullivan who had been a servant in the employ of Mrs. E. Lyons, and who had been placed by Mrs. Lyons in Bull's insane asylum, where she died. Deponent called on said Collins in company with Mr. C. H. Farrell. The said Collius would not allow either said Farrell or deponent to read any of said letters until they paid to said Collins the sum of twenty pounds and agreed to pay said Collins the further sum of twenty pounds when complainants should recover in the above-entitled suit. The first mentioned sum was paid to said Collins, who thereupon agreed to obtain from Mrs. Lyons the rest of the letters written by Sullivan to her, and all of said letters were to be turned over by said Collins to deponent for use as evidence in the above-entitled suit. Deponent and C. H. Farrell then cabled the name of said Collins to Piles, Donworth & Howe, as a witness to be examined on behalf of complainants in the above-entitled suit: on the 18th day of November, 1901, the said Collins brought the said letters to the office of the consul of the United States at Cork, and said letters were turned over by said Collins to deponent. Deponent then in the presence of Arthur Julian, Esq., and James B. Howe, was about to return said letters to Collins until deponent should need them, when the said

143 Collins stated that he had no use for said letters, and that he knew they would have to go to the United States, and

that deponent could retain them. Deponent then retained the letters, and at that time it was expected by counsel for complainants that Collins would be called as a witness to testify as to the handwriting of Sullivan, and how said letters came into his possession, but for the reasons stated in the affidavit of James B. Howe, which deponent has heard read, said Collins was not examined as a witness, and the said letters were turned over by deponent to said James B. Howe, and have since that time been introduced in evidence at the hearing before Hon. Eben Smith in the city of Seattle.

Deponent was present at the examination of Rev. Canon Carey, and knows that he was examined by complainants and cross-examined by counsel for Marie Carrau; that he was thereafter called as a witness in behalf of Marie Carrau and examined by her and cross-examined by counsel for complainants; that he testified from the registers of his parish, and that all of the evidence which could be obtained from said registers or from said Canon Carey in regard to the relationship of complainants to John Sullivan was obtained. On the 21st day of November, 1901, at the office of Messrs. Wynne & Wynne, in Cork, deponent and James B. Howe called on the witness, James Mooney, and had a conversation with him in regard to what he knew about John Sullivan, and the said Mooney then and there stated that he had been called upon by said Henry P.
144 F. Donegan for information in regard to Sullivan; and that he, the said Mooney, had given the said Donegan all the information which he possessed concerning the said Sullivan. Deponent made a personal examination of the records of the office of L. Cother, and he also was present when the said L. Cother produced the records of his office to the deponent and James B. Howe; that deponent and James B. Howe both examined said records and were unable to ascertain anything concerning the birth of any member of the Sullivan family, or of the family of either of the complainants, and deponent was informed and believes that the office of said Cother was not established by law until about thirty or thirty-five years ago, long after the birth of any of the children of the father and mother of John Sullivan, deceased; that the only object in giving the name of L. Cother as a witness for complainants was to have the said L. Cother testify as to the death of Ellen Silva and Bessie Sullivan, but the said Cother was not examined as a witness to prove said fact, because said fact had been established by a large number of witnesses, and it was unnecessary therefore to examine the said L. Cother. Deponent attaches to this affidavit a statement furnished him by said Eugene F. Collins as a statement of all the facts within the knowledge of Mrs. E. Lyons on the subject of the family of John Sullivan, deceased, and he also attaches hereto the letter of the said Eugene Collins accompanying said statement.

Deponent knows that it is not true that any of the persons
145 named in the affidavit of said Marie Carrau were discovered by her solicitor after the taking of the depositions was closed. Deponent knows that the said Donegan knew of the whereabouts of

each and every one of said witnesses on the first day that evidence was taken under said commission. The said Donegan was well acquainted long prior to said time with the Rev. Canon Carey, with L. Cother, with James Mooney and with Eugene F. Collins, and on the 19th day of November, 1901, the witness, Hannah Callaghan, testified to a conversation between herself and said Mrs. E. Lyons, and the said Hannah Callaghan was cross-examined both by the said Donegan and the said Eugene F. Collins, as to her knowledge of Mrs. Lyons and as to her conversation with Mrs. Lyons, and on that evening the said Collins and the said Donegan dined at the Hotel Victoria in Cork with Mr. C. A. Riddle.

Deponent further deposes and says that the said Collins told deponent that he had shown the letters above mentioned to said Donegan. Deponent further deposes and says that he has read the statement of Henry P. F. Donegan in regard to the commission being closed at a time prior to the date which had been agreed on between said Donegan and counsel for complainants. The statement of said Donegan is absolutely unfounded. Deponent was present on the sixth day of December, 1901, and remembers distinctly that the consul waited at Cork until after three o'clock of said day for said Donegan to furnish said consul with a statement of said Donegan's claim as to what took place during the examination of Hannah
146 Callaghan, which said statement was to be returned with said commission. Said Donegan did not appear, and the consul left Cork and returned to his office at Queenstown. On the evening of the 6th of November deponent notified said Donegan that counsel for complainants would attend before the counsel at Queenstown on the 7th day of December for the purpose of having the commission closed and the depositions forwarded to the United States. There was no agreement whatsoever that the matter should be delayed, but, on the contrary, said Donegan was notified by deponent that the commission would be closed at 10 o'clock on December 7th, 1901. The said Donegan did not state whether he would attend or not, and the commission was closed on the 7th day of December, 1901.

Deponent further deposes and says that the agreement under which the said Collins was paid the sum of twenty pounds above mentioned has been introduced in evidence at the hearing before Honorable Eben Smith, and that by said agreement the said Collins bound himself to furnish to complainants all information which the said Collins then had in regard to the Sullivan family, and all information which he might thereafter obtain, and on the 21st day of November, 1901, at the Victoria hotel, in Cork, Ireland, in the presence of deponent and James B. Howe, the said Collins stated to the said James B. Howe that he, the said Collins, had given to counsel for complainants all of the information called for by his con-
147 tract, and that all of his information was contained in correspondence between Sullivan and Mrs. Lyons and between Sullivan and the said Collins. Deponent further deposes and says that the said Collins read to deponent from a letter written

by Mrs. Lyons to said Collins the following, and deponent now has in his possession a certificate from said Collins that said language is contained in said letter:

"I remember seeing a woman long ago. She was a cousin of Sullivan's. I think she lived in Sunday's Well, and she asked me at one time to send a kind message to Sullivan for her, which I did, but I haven't now the faintest recollection of her name."

Deponent is satisfied, therefore, that there is no foundation whatsoever for the claim made by Marie Carrau in her affidavit, that any of the witnesses named in said affidavit can give any information concerning the family of John Sullivan, other than that which is now before the court.

JNO. B. WRIGHT.

Sworn to and subscribed before me this the 4th day of February, 1902.

[NOTARIAL SEAL.] ELMER E. TODD,
Notary Public in and for the State of Washington,
Residing at Seattle.

(*Exhibit Attached to Affidavit of John B. Wright.*)

I knew Bessie Sullivan. She was a servant in my house for twenty years. A short time before she died she lost her reason, and I had her put into Cork district asylum, thence to Bull's
148 asylum in 1878. Meantime I was in correspondence with John Sullivan of Seattle, Washington, who was a brother of Bessy. I know absolutely nothing about the father of John Sullivan except that I believe he worked in some brewery. I think he was on pension, when I heard of him I had several letters from John Sullivan at various times, all of which have been handed by my solicitor to Mr. J. B. Wright. I communicated with the said John Sullivan informing him of the death of his said sister, and being satisfied of there being no heirs I communicated with Mr. Collins, solicitor, Dublin, and I believe he took out administration to the said Bessie Sullivan's estate, and that the money was sent to John Sullivan, dec'd. The said John Sullivan called when he was over in Ireland to see me in June, 1900. He remained in my house from Saturday morning till the following Monday night, when he went back to America. I had *a* letter- from him which were handed by me to my solicitor, Mr. Collins, and I understand he has handed them to John B. Wright, solicitor. I do not know and never heard what was John Sullivan's mother's maiden name, and I heard of the sister Ellen Silva, & I did know her. I never heard Bessie speak of any of her relatives, and I am not aware she had any.

EUGENE F. COLLINS,
Solicitor, Commissioner, for Taking Affidavits.

149 TEMPLE CHAMBERS, EUSTACE STREET,
DUBLIN, 23*rd Nov.*, 1901.

J. B. Wright, Victoria hotel, Cork.

DEAR SIR: *Re* Sullivan dec'd. I enclose draft evidence of Mrs. Lyons herein.

Yours faithfully, EUGENE F. COLLINS.

Copy of within affidavit received this 4th day of February, 1902.
W. F. HAYS,
Solicitor for Marie Carrau.

[Duly filed February 7, 1902.]

[Title of Court and Cause.]

Affidavit of John B. Wright.

STATE OF WASHINGTON, } ss:
County of King, }

John B. Wright, being first duly sworn, on oath deposes and says: I have heard read the affidavit of Henry S. Noon, to which is attached a letter in the handwriting of Mrs. E. Lyons, addressed to Mr. Blake. I have seen a number of letters from Mrs. Lyons, and I have had two letters from her written to me. I know that the letter attached to the said affidavit of said Noon is in the handwriting of said Mrs. Lyons.

JOHN B. WRIGHT.

150 Sworn to and subscribed before me this 5th day of February, 1902.

[NOTARIAL SEAL.] ELMER E. TODD,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Copy of within affidavit received this 5th day of February, 1902.
W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Marie Carrau.

[Duly filed February 7, 1902.]

[Title of Court and Cause.]

Memorandum of Decision on Application of Marie Carrau for a Commission to Take Depositions in Ireland.

In support of the application now made for a commission to take depositions on interrogatories, an affidavit has been filed by Marie Carrau, stating upon information and belief that certain persons re-

siding in Ireland can give testimony material to the issue, and tending to disprove the claims of the complainants, and alleging that the witnesses were not known and their evidence was not discovered until after the return to this court of the commission heretofore issued for the taking of depositions in Ireland.

Several opposing depositions have been filed which prove
151 to my satisfaction that when the depositions were being taken in Ireland under an open commission permitting the oral examination of any and all witnesses which either of the parties might introduce, Marie Carrau was represented by a solicitor named Donegan; that Mr. Donegan was personally well acquainted with Collins, whose deposition is proposed now to be taken, and was in conference with him, that Donegan did examine and cross-examine Rev. Canon Carey, and that he was fully informed as to all testimony which James Mooney may be able to give, and I have a right to presume that an Irish solicitor is informed with reference to the official records of births, marriages and deaths in that country. The only other evidence sought for is a deposition of Mrs. Lyons, who is a relative of Collins, through whom Mr. Donegan undoubtedly had full information as to all material evidence which she could give. Unless Mr. Donegan neglected the cause of his client, there can be no reasonable excuse for the failure to put in any testimony or evidence obtainable from the sources indicated, under the open commission. To send again to that far off country to take depositions upon written interrogatories must subject counsel for the complainants to great expense and inconvenience, and deprive them of the satisfaction of being on the ground to conduct searching cross-examination and confront the witnesses by whom it is proposed to impeach their professional integrity. Therefore, I am not willing to issue a commission upon the uncertain showing made by the affidavit of Marie Carrau, as to her information and belief.

In this case, a valuable estate appears to be without an
152 owner. The prize is a strong temptation to set up claims which may be unfounded in fact and law. The court should proceed with caution and deliberation, and I am inclined to allow ample latitude for the introduction of material evidence brought forward in good faith. I consider, however, that in view of the opportunities which Marie Carrau has already failed to improve for obtaining the testimony of witnesses named in her affidavit, that an application such as she now makes to the court should be supported by a strong showing, including affidavits of the proposed witnesses, setting forth substantially such material facts as may be within their knowledge and certified copies of the records, if there are any, which may tend to prove or disprove the claims of the complainants with respect to their relationship to the deceased John Sullivan.

The present application will be denied, but I will grant leave to renew it, if with reasonable promptness, such supporting evidence and certified records shall be offered. If that is done, counsel may expect that the court will order an open commission to issue for a

full examination and cross-examination, and the applicant will be required to deposit in court the sum of $500.00 to reimburse the complainants' counsel who may be employed in Ireland or sent from Seattle to attend the examination of the witnesses.

C. H. HANFORD, *Judge.*

[Duly filed February 10, 1902.]

153 [Title of Court and Cause.]

Notice in Rehearing of Cause.

To the complainants and their attorneys, Piles, Donworth & Howe:

Take notice that the defendant, Marie Carrau, will, on Monday, February, 17th, 1902, at ten o'clock a. m., of said day, or as soon thereafter as counsel can be heard at the courtroom of said court, upon the pleadings and files in said cause, object to the jurisdiction of this court and its power to hear and determine this cause under the issues.

You will further take notice that at said time and place, or as soon thereafter as counsel can be heard, the defendant, Marie Carrau, will, in the event the court shall retain jurisdiction to hear and determine said cause, demand that the issues of fact raised by the pleadings in this case be tried by a jury, and for such purpose the court will be asked to determine the issues to be so submitted to the jury, or refer the same to the master to be determined.

You will further take notice that defendant will at the same time, or as soon thereafter as counsel can be heard, demand that the single issue of fact, viz., as to whether the complainants are in fact heirs of John Sullivan, deceased, and interested in his estate
154 be determined and adjudicated before proceeding with the merits or any other fact at issue in said cause.

W. F. HAYS,
J. P. HOUSER,
Attorneys for the Defendant Marie Carrau.
J. W. ROBINSON, *Of Counsel.*

Copy of within notice received and due service of same acknowledged this 12th day of February, 1902.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors for Complainants.

[Duly filed February 15, 1902.]

[Title of Court and Cause.]

February 17, 1902.

General Order Book, vol. 7, Circuit Court, p. 157.

Order Overruling Objections to Jurisdiction of Court, etc.

Now, on this day, this cause coming on for hearing upon the objections of Marie Carrau to the jurisdiction of this court and its power to hear and determine this cause under the issues, the court, after hearing argument of respective counsel, overrules said objections, to which ruling of the court the defendant excepts, and her exceptions is allowed.

155 [Title of Court and Cause.]

Notice of Application to Set Cause for Hearing.

To Terrence O'Brien, as administrator, defendant, and Pratt & Riddle, his solicitors, and to Marie Carrau, defendant, and W. F. Hays, her solicitor:

You will please take notice that on the 17th day of March, 1902, before the Honorable C. H. Hanford, judge of the above-entitled court, at the Federal courthouse, in the city of Seattle, Washington, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, complainants will move the court to have the above-entitled cause set down for hearing.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Solicitors for Complainants.

Copy of within notice received this 15th day of March, 1902.

PRATT & RIDDLE,
Solicitors for Terrence O'Brien, Administrator.
W. F. HAYS,
Solicitor for Marie Carrau.

[Duly filed March 15, 1902.]

[Title of Court and Cause.]

Motion for Continuance of Hearing Cause.

Come now the solicitors for Marie Carrau, one of the defendants herein, and move the court for an order of postponement of
156 the trial of this action until the May term of this honorable court, and until the further assignment thereof.

This motion is based upon the files and record herein, and upon the affidavit of Marie Carrau and W. F. Hays, attached hereto.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Marie Carrau.

[Duly filed April 4, 1902.]

[Title of Court and Cause.]

Affidavit of Marie Carrau.

THE STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn, upon her oath says that she is one of the defendants named herein; that this action was instituted in this court on June 20, 1901, and that the answer to the bill was filed October 22, 1901; that on September 13, 1901, an open commission was issued herein to the United States consul at Cork, Ireland, to take the testimony of certain witnesses and affiant here refers to the records and files herein for particulars, and makes such portion of the records and files as are pertinent a material part of this affidavit; that under this commission a large quantity of evidence was taken in Ireland and has been returned to this court, and reference is hereby made thereto, and the same, wherein
157 material, made a part of this affidavit; that on January 25, 1902, after the depositions taken herein had been published, this affiant made application for a further commission to take the testimony of certain witnesses in Ireland on behalf of her defenses herein and for the purpose of disproving some of the evidence submitted on behalf of the complainants and taken under the former commission, and such application and the facts therein set forth as the reason and basis for asking for such commission are hereby referred to, and the same made a part hereof; that on February 7, 1902, said application for another commission came on for hearing, and after argument by the respective solicitors, the same was taken under advisement by this honorable court.

That on February 10, 1902, the honorable judge of this court filed a memorandum in writing denying said application for a commission, and reference is hereby made to said memorandum, and the same made a part hereof; that in rendering said decision, the honorable judge of this court used the following language:

"In this case, a valuable estate appears to be without an owner—the prize is a strong temptation to set up claims which may be unfounded in fact and law. The court should proceed with caution and deliberation, and I am inclined to allow ample latitude for the introduction of material evidence brought forward in good faith. I

consider, however, that in view of the opportunities which Marie Carrau has already failed to improve for obtaining the testimony of
witnesses named in her affidavit, that an application such as
158 she now makes should be supported by a strong showing, including affidavits of proposed witnesses, setting forth substantially such material facts as may be within their knowledge, and certified copies of the records, if there are any, which may tend to prove or disprove the claims of the complainant with respect to their relationship to the deceased John Sullivan.

"The present application will be denied, but I will grant leave to renew it, if with reasonable promptness, such supporting evidence and certified records shall be offered. If that is done, counsel may expect that the court will order an open commission to issue for a full examination and cross-examination, and the applicant will be required to deposit in court the sum of $500 to reimburse the complainants' counsel who may be employed in Ireland or sent from Seattle to attend the examination of the witnesses."

That on February 15, 1902, the solicitors for the complainants served and filed notice herein asking that this honorable court assign this action for trial February 17, 1902, at which time the solicitor for Marie Carrau, W. F. Hays, appeared before this honorable court and made objection to such assignment, but that notwithstanding such objection, this honorable court assigned this cause for trial on April 4, 1902, at ten o'clock a. m.

That the said affiant and her solicitors, *relying* upon the decision of this honorable court above referred to, upon the application for another commission to issue, in which it was said "The present application will be denied, but I will grant leave to renew it, if
159 with reasonable promptness such supporting affidavits and certified records shall be offered. If that is done, counsel may expect that the court will order an open commission to issue for a full examination and cross-examination, and the applicant," etc

That the conditions imposed by the memorandum above referred to were acquiesced in and accepted, and that responsive thereto, W. F. Hays, one of the defendants' solicitors, immediately cabled Henry P. F. Donegan, at Cork, Ireland, to prepare and forward as soon as possible the affidavits of the witnesses mentioned in the application for such commission, together with the certified records mentioned in the memorandum decision of this honorable court above referred to, and immediately thereafter made every arrangement necessary to comply with the conditions suggested in the decision and the letters and copies of letters and cables and answers passing between the solicitor of affiant and the parties with whom arrangement- were immediately made to represent this affiant in Ireland, are hereto attached, hereby referred to and the contents made a part hereof

That in doing so, the parties hereto have acted in entire good faith, and with no other desire than to present all the facts by way of testimony within their knowledge, and which they can secure in

Ireland, relating to the question of heirship of these complainants to John Sullivan, deceased, and have used every diligence, even to frequent and expensive use of the cable between Ireland and Seattle in order to hasten the matter, so that affiant would be able to
160 present to this honorable court the affidavits and certified records, made a condition upon which affiant might secure a commission to present such evidence in the usual way, to be used at the trial and determination of this action and the issues herein.

That by reason of the leave granted affiant to renew the application for a further commission to take testimony in Ireland contained in the memorandum decision of this honorable court, this affiant has gone to a very considerable expense, which has all been paid, and has incurred large obligations in connection therewith and by reason thereof, in order to secure the affidavits and official records hereinbefore referred to, and has in every way possible used diligence to secure said affidavits and records, to the end that she might renew her application for a commission to take the testimony of the witnesses indicated in her former application for such examination.

That she relied upon said decision, and in good faith believed that she would have a reasonable time within which to secure that evidence and records, and she submits to this honorable court that she has used every diligence to that end; that should this court proceed to the trial of this cause at this time, in the absence of the testimony which she is able to secure, the evidence of which by way of affidavits and records she has secured, and which are now on their way through the mails to Seattle from Ireland, she would be deprived of the advantage of the testimony and records hereinabove referred to, and be deprived of her right to have such testi-
161 mony and records presented to this honorable court in the usual manner, and that this would work a very great injustice and wrong and injury to her.

That if she had not understood that she was to have a reasonable time in which to secure such testimony and records and upon the receipt of which to make a renewal application for a commission to take such testimony, she would not have incurred the heavy expenses and obligations hereinabove referred to.

That the testimony hereinabove referred to can only be secured upon a commission in Ireland, and that the individuals referred to in said application for a commission are the only individuals who are acquainted with the facts and from whom this testimony can be secured, and that this affiant cannot prove these facts by any other person or persons than those mentioned in said application, and in no other way than issuing a commission from this honorable court to take this testimony in Ireland.

That relying upon the right of this affiant to secure such testimony and official records mentioned above, and her right to renew her application for a commission based thereon, she caused to be cabled to Ireland such funds as were necessary to meet the expenses there incident to securing such testimony; that from the cables re-

ceived from Ireland, it will be seen that those documents which will furnish the basis for her renewal application for a commission are now on their way from Ireland to Seattle by mail and should reach her not later than the twelfth of April, 1902.

That unless affiant be permitted to present to this honor-
162 able court such renewal application based upon the testimony so as aforesaid transmitted to Seattle, she will have wholly lost, without possibility of being remunerated, all the expenses which she has been put to and all the cash she has paid out by reason of her attempt to secure such testimony and official records based upon the memorandum decision of the court hereinabove mentioned.

That affiant and her solicitors have acted in entire good faith in this matter, and that it was the intention, immediately upon the receipt of such testimony and official records as are hereinabove mentioned, to renew the application for a commission, and such renewal will be made to this honorable court immediately upon receipt of the affidavits and such official records as may come, and the requirement of the memorandum decision upon the former application for commission will be at once wholly complied with in making the renewal application; that the five hundred dollars required by such decision will be deposited in the registry of the court as the court requires; that this application for postponement of this trial is made in good faith, and not for the purpose of delay, but to the end that justice may be done this affiant.

MARIE CARRAU.

Subscribed and sworn to before me this 3d day of April, 1902.

[NOTARIAL SEAL.] N. S. PETERSON,
Notary Public for the State of Washington,
Residing at Seattle, King County.

163 [Title of Court and Cause.]

Affidavit of W. F. Hays.

STATE OF WASHINGTON, } ss.:
County of King, }

W. F. Hays, being duly sworn, says that he is the senior attorney and solicitor in the action for Marie Carrau, and has been from the first of this action; that he has read the affidavit of Marie Carrau attached hereto, knows its contents, and that the facts therein stated are true; that the application on behalf of his client for a second commission to take the testimony in Ireland, to which reference is made in the affidavit above mentioned, was recorded and submitted on February 7th, 1902, and that the honorable judge of this court

filed a memorandum of the decision on February 10th, 1902; and that affiant received the same through the mails on February 12th, 1902, and that on April 13th, 1902, he sent a letter of instruction to Henry P. F. Donegan, whose services on behalf of Marie Carrau were desired as solicitor, and transmitted to the said Donegan with said letter, a copy of the memorandum decision above described; and that said Donegan was requested to immediately secure the affidavits of the parties named in the application of Marie Carrau for a commission such as aforesaid heard by this honorable court on February 7th, 1902, and also to secure certified copies of the records, births and deaths of the father and mother and family and
164 brothers and sisters of the said John Sullivan, deceased; also requesting the said Donegan, as solicitor, to prepare the same and transmit at the earliest date possible, calling his attention especially to that portion of his honor's memorandum of decision wherein authority was granted Marie Carrau to renew her application for a commission to take testimony in Ireland, if with reasonable promptness certain supporting evidence and certified records should be offered to this honorable court as a basis for the issuing of such commission; and that such letter containing said carbon copy of said opinion was mailed to the said Donegan's address at Cork, Ireland, and deposited in the United States postoffice at Seattle, Washington, postage prepaid; and that the said Donegan was advised that funds would be sent him for the purpose of meeting the expenses necessary for the securing of such testimony which the said Donegan had heretofore informed *that* affiant, by letter, was in existence, and which he could not secure. And as to such testimony, and as to the parties and records, etc., this affiant here refers to the application of Marie Carrau for a commission hereinabove mentioned, and the affidavits filed in court, and makes the same a part of this affidavit.

That under the due course of mail the letter would reach Donegan about the first of March, 1902, and that on the third day of March, 1902, affiant, for and in behalf of Marie Carrau, cabled the said Donegan the sum of one hundred and fifty dollars ($150.00) in payment for his services and the expenses incident to securing such testimony; that such fund was cabled to said Donegan
165 through the Washington national bank of Seattle, Washington, a copy of the receipt thereof is hereto attached and made a part hereof.

That, on March 6th, 1902, affiant received by cable from said Donegan an acknowledgment of the receipt of the money, and *stated by* the documents referring to the testimony above mentioned required by the memorandum decision of this honorable court, would be forwarded at the earliest possible date.

That on March 21st, 1902, affiant cabled said Donegan at Cork, Ireland, asking what progress he was making towards securing the affidavits and evidence required, and asking when it would be forwarded, and thereafter, to wit, on March 27, 1902, the said Donegan cabled affiant answer to the inquiry, "By next mail," saying that it

would be forwarded by next mail; and affiant is informed and believes and so states the facts to be, that said affidavits and documents secured by the said Donegan, and which were required by this honorable court, left Cork, Ireland, for Seattle, on March 29th, 1902, that being the next mail day after receiving said Donegan's cable above mentioned; and that said affidavits and documents in the due course would reach Seattle on or about April 12th, 1902; and this affiant verily believes that such affidavits and documents, as were referred to in the application for a commission to take testimony in Ireland and the accompanying affidavit recorded and submitted on February 7th, 1902, will arrive in Seattle on or about April 12th, 1902, and that it was intended and expected that application

166 for commission to issue would be renewed, based upon such affidavits and documents, in accordance with the decision of this honorable court with reference to a former application hereinabove referred to.

That on March 15th, 1902, the solicitors for complainants served a notice on affiant that on March 17th, 1902, they would ask the court to assign this *court* for trial, and that on said March 17th affiant called the attention of this honorable court to the fact that this action should not be tried until the appearance of these documents, and that affiant feared that they would not be received prior to this April 4th, 1902, the date upon which the court set the cause for trial; and that affiant's fears have been realized, and that such documents have not yet been received but are on their way and will reach Seattle in due course of mail as hereinabove stated.

Affiant says that immediately upon the handing down of the decision of this honorable court upon the application for a commission, this affiant wrote the required letters to Ireland and also employed the telegraph liberally at great expense, as a means of expediting the obtaining of the necessary affidavits and documents, and also used *very* possible diligence to that end; and has expended since the handing down of said opinion in this behalf, at least three hundred dollars ($300.00), and incurred additional obligation by reason thereof in the sum of one hundred and fifty dollars ($150.00), for and on behalf of the respondent Marie Carrau.

167 And this affiant is informed and believes that the affidavits and documents now on the way to Seattle from Cork, Ireland, are such that they affirmatively show that these complainants are not related and were not related to John Sullivan, deceased.

And affiant further states that the respondent, Marie Carrau, cannot safely go to trial in the absence of these evidences, and without having it taken in the usual manner so that it may be used as evidence upon the hearing, and which she is unable to supply from any other source.

And affiant further states that he is ready and willing to submit to this honorable court for its inspection, the original cable and telegram in cipher, together with the key thereto.

W. F. HAYS.

Subscribed and sworn before me this 4th day of April, 1902.

G. E. DE STEIGUER,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Copy of Receipt.

Washington national bank.

U. S. depositary.

SEATTLE, WASH., *March* 3, 1902.

Received from W. F. Hays — ch. one hundred fifty — dollars account of — cable transfer £30 — Donegan — Cork

THE WASHINGTON NATIONAL
BANK OF SEATTLE.
WM. THAANUM, *Teller.*

168 Copy of within motion and affidavits received and due service of same acknowledged this 4th day of April, 1902.

P., D. & H.

[Duly filed April 4, 1902.]

[Title of Court and Cause.]

Demurrer to Evidence.

Upon complainants resting, the solicitors for the respondent, Marie Carrau, at this time demur to the sufficiency of the evidence introduced in support of complainants' causes of action upon the following grounds:

1. Because said evidence wholly fails to support or prove the allegations in the bill of complaint.

2. Because the evidence wholly fails to establish that the complainants or either of them were or are related to John Sullivan, deceased.

3. Because the evidence wholly fails to establish fraud.

4. Because the evidence wholly fails to show facts sufficient to give to this honorable court jurisdiction hereof.

W. F. HAYS,
J. P. HOUSER,
J. W. ROBINSON,
Solicitors for Marie Carrau.

[Duly filed April 4, 1902.]

169 [Title of Court and Cause.]

Application for Issuance of Commission to Take Deposition in Ireland.

Comes now the defendant, Marie Carrau, by her solicitors, and renews her motion and application herein for a commission to take the testimony of certain witnesses and to secure certain documentary evidence in Ireland, leave of court having heretofore been granted to renew this motion in the memorandum decision filed herein by this honorable court, and by oral statement made in open court at the date of the hearing of this cause upon the evidence taken and reported, based upon the showing heretofore made that certain affidavits and documentary evidence was to be furnished and was on its way from Ireland, and which evidence, by way of affidavits and documentary, has since been received, by reason of which and the additional showing hereby made, the said Marie Carrau is now entitled to have a commission issued for that purpose, and upon such showing heretofore made, to which reference is hereby made and the same made a part hereof, together with the files and records, including the memorandum of decision filed herein, and upon the further showing attached hereto, to wit, the affidavit of respondent, Marie Carrau, and her solicitor, W. F. Hays, and the affidavits and letters of Eugene F. Collins, Mrs. E. Lyons, L. Cotter and the certificate and letters of Henry P. F. Donegan; and that a commission issue out of
170 this honorable court directed to Daniel Swiney, consul of the United States at Cork and Queenstown, Ireland, or to any other person named by the court, and directing the clerk of this court to issue an open commission to the person appointed by the court to take the deposition of each of the witnesses named herein and in the affidavits hereto attached, as witnesses, upon oral examination on behalf of the defendant Marie Carrau in the above-entitled action, requiring said commissioner before whom said depositions are to be taken, to reduce the same to writing and return the same to the clerk of this court as is the custom.

This motion is based upon the records and files herein and upon the affidavits hereto attached.

The witnesses whose testimony is desired are as follows:

Eugene F. Collins, Temple chambers, Eustis street, Dublin, Ireland.

Henry P. F. Donegan, Cork, Ireland.

Mrs. E. Lyons, 8 Lower Crescent, Belfast, Ireland.

James Mooney, Cork, Ireland.

L. Cotter, Douglas roads, Cork, Ireland.

Rev. Canon Carey, parish priest, Carragaline, Cork, Ireland.

And such others as may be desired, and considered material.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Marie Carrau.

171 [Title of Court and Cause.]

Affidavit of Marie Carrau.

STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being duly sworn, says that she is one of the defendants in this action and the same individual who made affidavit in this action upon which was based the motion of her solicitors for a commission to issue herein to take the testimony of certain witnesses in Ireland upon interrogatories, and which was filed in this action and brought on for hearing on the — day of February, 1902, and this affiant here refers to such application on file herein, and by such reference hereby makes the same and each and every part thereof a part of this her affidavit, and intending by such reference thereto to make all the facts therein stated a part of this affidavit to the same extent as if said affidavit and the contents thereof were herein set forth, and this affiant also refers to the application for a continuance of the hearing before this court upon the evidence taken, and reported upon the open commission heretofore issued herein to take the evidence of certain parties in Ireland and heretofore returned to this court, which application was filed in the clerk's office of this honorable court on the — day of April, 1902, together with the affidavits which were made a part of that application, and by such reference makes all the facts therein con-
172 tained a part of this affidavit to the same extent as though the facts then and therein stated were made a part of this affidavit by being set forth in detail.

And this affiant further states that the affidavits and documentary evidence referred to in her former application for a commission to issue herein, and in her application for a continuance of the hearing hereinbefore referred to have now been received by affiant's solicitor in Seattle and such affidavits, letters and documents are hereto attached, hereby referred to and made a part hereof.

And this affiant further states that by reason of the leave given her by this honorable court contained in his memorandum decision filed herein, she has gone to very considerable expense in securing said affidavits and documents, and that she here submits that an examination of the same will show their materiality, and that such evidence becomes material and important to her in her defense to this action, and that the whole record hereby referred to furnishes a complete and reasonable excuse, and entirely exonerates her from blame, as well as her solicitor in Ireland, for not having had such evidence taken before the commissioner to whom the open commission was issued, and that the evidence, if permitted to be taken in Ireland, would go much more into detail, and be even stronger in support of her contention than is shown by the affidavits hereto at-

tached, it being apparent from the record that the showing, by way of affidavit and documentary, was made hurriedly owing to the necessity of getting them here at the first possible moment, and
173 that this evidence very clearly rebuts much of the evidence taken by complainants in Ireland under said commission, and is to be given by parties who are wholly disinterested.

Affiant further states that she is now able and willing to promptly comply with the suggestion of this honorable court that it would be necessary for her to pay into the registry of the court the sum of five hundred dollars to meet the expenses of the solicitors for complainants, and that if this honorable court now considers this to be reasonable and equitable, she will promptly pay the same into the registry of the court.

And this affiant further states that all of the evidence heretofore taken under the commission in Ireland sought to establish the heirship or the relationship of these complainants to John Sullivan, deceased, and that the testimony here sought to be taken, as shown in the affidavits and documents hereto attached of citizens of Ireland, goes solely to the question of heirship, and absolutely disproves the relationship of these complainants to the said Sullivan, deceased, and therefore it is very material to the defense of this affiant, and if the commission is permitted to issue to take the testimony of said witnesses and to secure as evidence documents mentioned, the attempted establishment of heirship on the part of complainants will be wholly negatived, and this affiant further submits to this honorable court that whatever may have been the reason for the failure to take this evidence heretofore upon said open commission in Ireland, these records disclose sufficient to excuse any
174 neglect or oversight or mistake or blunder on the part of affiant's solicitor in Ireland, and to relieve this affiant therefrom, and to entitle this affiant to have the benefit of that evidence, even though it might have been taken in part under the former commission.

Affiant directs the court's attention to the records herein, whereby it is shown that her solicitor in Ireland expected to take certain testimony of certain witnesses herein referred to, under the former commission, but was deprived thereof by no fault of his or this affiant's, and that by reason of the fact that there was a misunderstanding between the solicitors, by reason of which this affiant was deprived of this evidence, ought not to be the cause for invoking a rule which would work a very great injustice to affiant in her defense in this action and be absolutely inequitable, and be the means by which heirship of certain individuals might be established when, if all the facts were brought to the court, it would be shown that they were not in any wise related. MARIE CARRAU.

Subscribed and sworn to before me this 17th day of May, 1902.

R. W. EMMONS,

Notary Public for the State of Washington,
Residing at Seattle.

175 [Title of Court and Cause.]

Affidavit of W. F. Hays.

STATE OF WASHINGTON, }
County of King, } ss:

W. F. Hays, being first duly sworn, deposes and says that he is one of the solicitors of the defendant Marie Carrau; that as such solicitor he had the exclusive correspondence with the solicitor of defendant and the witnesses in Ireland; that he has read the affidavit of Marie Carrau attached hereto; that he received, since the original application was made in this cause for commission and since the order of this court with reference thereto had been made, by due course of mail, the affidavits and letters of Eugene F. Collins, affidavits of Ellen Lyons, L. Cotter and James Mooney, and the certificate and letter of Henry P. F. Donegan, each and all attached to the affidavit of Marie Carrau: that he at once transmitted said affidavits to the solicitors for complainants, and permitted them to take copies of same.

Affiant says that he was required to expend several hundred dollars on behalf of defendant in procuring this additional showing suggested by the order of this honorable court.

W. F. HAYS.

176 Subscribed and sworn to before me this 17th day of May, 1902.

R. W. EMMONS,
Notary Public in and for the State of Washington,
Residing at Seattle.

1st and 2nd Victoria, chap. 56, sec. 42.

Form 6.

1 Number.	2 Name and surname of paupers.	3 Sex.	4 Age.	5 If adult, whether single, married, widower, or widow; if child, whether orphan, deserted, or bastard.	6 Employment or calling.
3314	Callaghan, Bridget.....	31805	30	Widow.....	Mendicant.
5	Timothy	31806	10	.....	
6	Johanna.....	31807	6	.....	

7 Religious denomination.	8 If disabled, the description of disability.	9 Name of wife or husband.	10 No of children.	11 Observations on condition of pauper when admitted.	12 Electoral division and townland in which resident.	13 Date when admitted or when born in the workhouse.	14 Date when died or left the workhouse.
R. C.....	A. B.....	.....	.....	Indifferent.....	G. U.....	9th Dec'r '48	Died 1st May 1849.
R. C.....	.....	.....	.....	do.	do.	do.	
R. C.....	.....	.....	.....	do.	do.	do.	

178 Certified a true copy of exhibit referred to in affidavit of John Cotter sworn 29th day of March, 1902.
(Signed) JOHN COTTER.

Attest: Consulate of the United States of America, Cork (Queenstown) Ireland.
[SEAL U. S. CONSULATE.] CECIL PRATT,
Deputy United States Consul.

[Title of Court and Cause.]

Affidavit of John Cotter.

I, John Cotter of Douglas road in the county of Cork, clerk of the district council of Cork, and clerk of Cork board of guardians, aged 21 years and upwards, make oath and say as follows:

1. The Cork board of guardians are the legal custodians of the records of the Cork Union workhouse; I say that I have been requested by Mr. Henry P. F. Donegan, solicitor, Cork, to examine said records from the years 1848 to 1849 with a view of ascertaining whether or not any entry exists therein relating to a certain Bridget Callaghan: I beg leave to refer to a certificate on which I have signed my name, previous to swearing this affidavit, which certificate is a true and faithful copy of the entries I found made in said records.

JOHN COTTER.

179 Sworn to before me, a deputy consul of the United States for Cork (Queenstown) Ireland. The words "and clerk of Cork board of guardians" being first interlined and the words "district council" struck out, and the words "board of guardians" substituted therefor. I know the deponent.

Dated this 29th day of March, A. D. 1902.
[SEAL U. S. CONSULATE.] CECIL PRATT,
Deputy United States Consul.

EUGENE F. COLLINS, *Solicitor.*

Commissioner, for taking affidavits.

TEMPLE CHAMBERS,
EUSTACE STREET, DUBLIN, *Mar.* 20, 1902.

DEAR DONEGAN: Mr. Hays has failed to carry out his undertaking to send me fees and as I cannot at all recognize the payment to you as being for my benefit in any way, I must refuse to give any evidence or make any statement. I am writing to Mr. Hays to this effect. You know it cost me about £10 to bring Mrs. Lyons up from Belfast last year for the enquiry, and I could not see my way to pay her expenses to Cork that time, for which I am now very glad, as I w-d be left lamenting and have had all the

expense for the purpose of putting money into the pockets of solicitors who don't seem to know anything about the case and who abandon their client when assistance is most needed.

180 Mrs. Lyons will not make any statement till I am paid, and her evidence is, as you know, most important. I know you will forgive me for adopting this attitude, but I am not disposed to move further without what I consider reasonable remuneration.

Yours very truly, EUGENE F. COLLINS.

H. P. Donegan, Imperial hotel.

PEMBROKE STREET, CORK, *May 30th*, 1900.

DEAR MRS. LYONS: Your very kind letter of 21st inst., was received. I was very much pleased to know that I am not a stranger in Ireland. I am certainly one in Cork. I have not found any person in Cork that I know. I called on Mr. Breton, Patrick street, jewellers, & found the grand-son managing the business—all the rest were dead. I worked for the grand-father. I have been out to the Lake of Killarney. I will tell you what I think of the lakes when I see you next Saturday.

Yours very truly, JOHN SULLIVAN.

SEATTLE, WASHINGTON, U. S. A., *Sept. 12th*, 1900.

DEAR MRS. LYONS: You will see that I am at my old home. I arrived here a short time ago after a very enjoyable trip. Business is very good here—my building is full of tenants and of

181 course I am getting a good rental from the building. Other properties which I have are increasing in value. Do not be surprised when I say that I am going to leave for Paris the last of this *money*. I will spend the winter there. When the weather gets cold in Paris I will go down to Monte Carlo. I just received the money from Wynne & Wynne, lawyers of Cork, one hundred and fifty-three pounds 12. 10. I brought the enclosure with me from Paris.

I am learning French—do not be surprised if I should write my next letter to you in French. Hoping that you are enjoying the best of health. Give me kind best regards to your children. There names have slipped my mind at this writing.

I am, very truly yours, JOHN SULLIVAN.

PEMBROKE STREET, CORK, *May 19th*, 1900.

DEAR MRS. LYONS: You will be surprised at knowing that I am in my old home in Cork after an absence of forty-one years. I arrived this morning. The first thing I did after registering my name at the hotel was to walk along the Grand parade to Patrick street. The streets do not look quite familiar to me as yet but will after a short acquaintance. I have written to Mr. E. F. Collins today

and will have him look after the money in the bank which
182 belong- to my deceased sisters Ellen & Bessie. I am on my way to the Paris exposition and hope to have the pleasure of seeing you before long.

Very truly yours, JOHN SULLIVAN.

[Title of Court and Cause.]

Affidavit of James J. Mooney.

I, James J. Mooney, of Fairville, College road, in the city of Cork, law clerk, aged twenty-one years and upwards, make oath and say as follows:

1. I am in the employment of Messrs. Wynne and Wynne, lawyers, whose place of business is at number 62 South Mall, in the city of Cork, in the capacity of managing clerk. In the month of May, 1900, John Sullivan, who described himself as of Seattle, Washington, United States of America, gave instructions to my employers through me to extract grants of administration of the estates of his deceased sisters, Bessie Sullivan, who died in 1886, at Bull's asylum, Blackrock road in the county of Cork, and Ellen Silva, who died in the year 1871 in whose names certain sums of money were standing in the Cork savings bank.

2. Whilst in Cork during the time my firm were engaged in his business the said John Sullivan was in the habit of coming into my employers' office very frequently, and as it was I was in charge of his business I had in the course of said business many con-
183 versations with him as to his personal affairs. On one occasion I distinctly recollect his informing me that he had gone up the previous evening to Evergreen to try if he could come across any of his friends, and while there he met a person (cannot now recollect whether he said it was a man or a woman), who claimed relationship with him but he was satisfied the person was no relative of his. He said if he had any relatives here, he'd give them the money, by this I understood him to mean the amount of his two sisters' estates. He spoke of being possessed of considerable wealth, but made no mention, save the foregoing reference to *my* relatives. He said he knew the money was in the bank for some time, but he didn't trouble to come over for it sooner. I know he was staying in Cork several days at the time I speak of. He left Cork to visit the Paris exposition with the intention of calling here on his way back to receive the money coming to him, but changed his mind and did not come back to Cork again, and the money was subsequently mailed to him by my employers to Seattle, on the 25th. August, 1900.

JAMES J. MOONEY.

Sworn to before me, a deputy United States consul, in and for Cork (Queenstown) Ireland, this 29th. day of March, A. D. 1902, the

words " after his sister Bessie died" being first erased and the words " for some time " being first substituted. I know the deponent.

184 Consulate of the United States of America, Cork (Queenstown) Ireland.

[SEAL U. S. CONSULATE.] CECIL PRATT,
Deputy United States Consul.

DUBLIN, 16*th April*, 1902.

W. F. Hays, Esq., attorney at law, New York building, Seattle, Washington.

Re JOHN SULLIVAN, Dec'd.

DEAR SIR: Referring to our exchange of cables I duly received £30 and proceeded at once to Cork as Mr. Donegan had the record of proceedings there, and also as I wished to see the affidavit he had already sent out, so that everything might be in order. I received your cable in Cork on Saturday last, it having been sent on from Dublin to me, and I cabled you reply on Monday. I sent off my affidavit on Saturday, so that it would be in time for the mail leaving on Sunday, and I immediately prepared affidavit for Mrs. Lyons and sent it up to Belfast for her to swear. I am hoping it will be in time for the mail leaving tomorrow. If not, it will go on Saturday night. Now with regard to the object of these affidavits, my intention is to show the discrepancies between the evidence of some of the witnesses, and the written documents. In the first place, you will observe that the claimant Corcoran who was first examined, states that he was born in 1837, that he came to Cork when he was just over 16, and that he lived there until he was 20. He would then have left Cork, according to his own state-

185 ment, in the year 1857, and he swears in reply to a question of mine that as to John Sullivan's going away to sea " when I was leaving Cork I had him down as dead, his father and sister had him down as dead. I got married in 1860 in Dublin." Now if you refer to the letter written by John Sullivan from the Imperial hotel Cork in May, 1900, to Mrs. Lyons, a copy of which has been already sent you, you will see he states that it was just forty years since he left Cork. Corcoran's statement therefore must be untrue, as if he left Cork in the year 1857, John Sullivan's parents could not have believed he was drowned as he (Sullivan) was at that time in a jeweler's shop in Cork and did not leave Cork until the year 1860, three years after Corcoran had left the city. This to my mind is a most important matter as it shows that Corcoran knew nothing at all about the family. In my affidavit which I sent you on Saturday last, I explained as to the power of attorney sent me by John Sullivan, in which he stated that there were no relatives of his deceased sisters except himself. This document was signed by him in the presence of a notary public, and evidence that it was re-

ceived by me was furnished herewith. His letter enclosing it to me is in the possession of Wright. Another point which I draw your attention to as being of the very greatest importance is that in the census returns which I made an exhibit of in my affidavit, you will see that in the years 1841 and 1851 Hannah Callaghan was not living with the Sullivan family at all. On searching the records which are kept most carefully, every person living in the
186 house is returned, servants, cousins, and all relations and if her story is true she must have been living in the year 1851 with the Sullivan family, but this is negatived by the existence of the records. It is unfortunate that the records for the years 1861 and 1871 are not in existence. Mr. Donegan has written you fully as to the effect of the evidence of Mooney and Cotter, and I do not think you should have any difficulty in getting a new commission, save only on the ground that this evidence which is now tendered could have been obtained at the last commission. Whoever was finding the funds at that time is in my opinion to blame for this as if Mr. Donegan had the funds which you have since sent him at the time the commission was heard in Cork, this evidence could have been put on record and would make it a very difficult matter for the claimants to succeed. I do not know if you have a copy of the record, if not, you should obtain one at once and read carefully the evidence given by Corcoran and Callaghan, and you will see that it does not prove nor does the evidence of any witness that Albina McAuliffe, the mother of John Sullivan, had two sisters, the mothers of the present claimants. I will write you further and point out the effect of Mrs. Lyons' affidavit when it comes to hand. One thing you ought to make very material use of is the fact, that none of the letters written by the deceased to Mrs. Lyons are put in evidence, and that Mrs. Lyons, who was the only person John Sullivan seems to have spoken of while in Ireland, was not examined. I would
187 not allow the letters which Wright has to be used as evidence now without examining Mrs. Lyons to whom they were sent, as he would very likely hold such letters as would be against his interest and try and make the court believe that they were all the letters which had been received. I would be very glad if you would send me the Seattle papers with the account so far of the case. You will hear from me fully by next mail.

Yours faithfully, EUGENE F. COLLINS.

Eugene F. Collins, solicitor, commissioner for taking affidavits.

EUSTACE STREET, DUBLIN, 17*th April*, 1902.

W. F. Hays, Esq., New York buildings, Seattle, Washington, U. S. A.

DEAR SIR: I now beg to enclose you affidavit from Mrs. Lyons which I trust you will find in order. Let me draw your attention to the statements in it which are of the most importance. In the first place if you look at the evidence given by Hannah Callaghan

in the record you will see she states that she called to Mrs. Lyons' residence at Grenville Quay, Cork, for the purpose of asking her to send a message to John Sullivan in Seattle. Now, Mrs. Lyons' affidavit shows that this is not so. She states in reply to a question—"Do you remember meeting Mrs. Lyons when Bessie was in the lunatic asylum?" her answer was, "I went to the house to her when she was in Grenville Quay and told her if she was writing
188 to John to kindly remember Hannah Callaghan to him." You will see from Mrs. Lyons' affidavit that this is not so—she met her in the street, and you will also see that Hannah Callaghan states she could not give any description of Mrs. Lyons as she only saw her 2 or 3 times. She must therefore have been—you will readily understand if her story is true—well acquainted with her appearance, otherwise she could not have stopped her in the street. With regard to what is deposed to by Hannah Callaghan that John Sullivan, before he went to America was at sea—you will observe Mrs. Lyons swears he was in Britton's jeweller's shop up to the time he left Cork and that is a statement made by himself to Mrs. Lyons when he was here last. One matter that I think is of great importance to you is the letter from John Sullivan to Mrs. Lyons stating that he was learning French and that the next time he wrote the letter might be in French. This would favorably strengthen your case to my mind that he intended to marry Miss Carau. The other letters which she exhibits are most important, as they state that he was a stranger in Cork. It seems almost incredible to me that any court would accept evidence from claimants which is altogether contradicted by the documents. Mooney's affidavit states that Sullivan said he searched everywhere for relatives and if he had any he would have given the money he recovered from the sister's estate to them. All that he had to do if he knew of the existence of Hannah Callaghan or Corcoran, or if they were any relatives whatever of his, would have been to ask anybody in Crone's lane
189 where Hannah Callaghan was and they would have told at once. I am quite satisfied that Hannah Callaghan was intimately acquainted with the family and knew them all well, but her story that she always called Peter Sullivan her uncle is not borne out by the facts.

If there is any further information I can give you or if there is anything you can suggest it would be necessary to prove which it is possible to procure for you, I will be most willing to do anything to help your client.

Trusting you will be satisfied with the efforts Mr. Donegan and I made, and awaiting with anxiety yours with result the enquiry, believe me,

Yours very truly, EUGENE F. COLLINS.

Search public record office.

Crone's lane, 1841.

	Yrs.	Mos.		
Peter Sullivan, aged	31	Married 1830	Laborer	Father
Abbey	30		Housemaid	Mother
Elizabeth	7	6		Daughter
Ellen	4	6		Daughter
John	1			Son

Crone's lane, 1851.

Peter Sullivan	Father	Aged 40	Married 1830
Abbey	Mother	40	"
Eliza	Daughter	17	At school
Ellen	"	15	"
John	Son	12	"

190 Exhibit "A" referred to in affidavit of Eugene F. Collins, sworn the 12th day of April, 1902.

EUGENE F. COLLINS,
ROBERT DEYO, *Comm.*

[Title of Court and Cause.]

Affidavit of Eugene F. Collins.

I, Eugene F. Collins, solicitor of 19, Eustace street, Dublin, aged twenty-one years, make oath and say as follows:

1. I was put into communication with John Sullivan, deceased, of Seattle, by Mrs. Lyons of 8 Lower Crescent, Belfast, about four years ago, with a view to taking out administration for him to some money standing in the name of his sister Bessie Sullivan in the Cork savings bank. For this purpose it was necessary to get some solvent person to go security for twice the amount of the assets, and I arranged with a friend of mine to do this and communicated this to John Sullivan at his address in Seattle. I had a letter from him in reply and in it he stated there were no relatives of his sister alive, that he was her only relative. I am not in a position to make an exhibit of this letter or refer to its further contents for reasons set out in a later paragraph. Having received this letter I prepared a power of attorney, nominating Mr. Michael K. Roche of Frances street, Dublin, to act in the matter as an administrator. In the power of attorney I left a blank for the names of the father
191 and mother of the deceased Bessie Sullivan and the dates of their deaths and also any brothers or sisters who had died, and the power of attorney contained the final statement, " I am the

only relative of the said deceased living." This power of attorney I duly forwarded to John Sullivan, and in the course of post received same back duly filed in father's name, Peter Sullivan, and the mother's Abbey Sullivan—I do not remember the dates given of their deaths—sister Ellen Silva, the date of death I cannot remember, and the final paragraph mentioned above that he was the only relative of the said deceased, Bessie Sullivan, and she had no other relatives was sworn to by John Sullivan. When the power of attorney arrived my client Mr. Roche did not seem inclined to act and said he did not remember giving me any understanding to act; in addition the power of attorney was irregular in form not having certificate of notary attached. I was unable to proceed with the administration proceedings, and wrote to this effect to John Sullivan, and explained to him the power of attorney was useless and could not be used here, but that I would prepare and send him another and endeavor to get an administrator—this letter I cannot now refer to for the reasons stated hereafter. I received a letter from him in reply that I need not trouble about it for the present as he intended coming over to the Paris Exposition and would call at Cork, and would then take steps to have administration granted. With regard to the power of attorney signed by John Sullivan it lay in
my office for some years and was stamped with a ten shilling
192 stamp thereon. I believe I returned it to John Sullivan or mislaid it, for although I have made a most careful search I cannot find it. I received a letter from John Sullivan, deceased, in May, 1900, from the Imperial hotel, Cork, in which he stated that he had arrived in Cork and would be anxious to see me as to his sister's affairs. Business in Dublin where I reside prevented me from complying with this request, and I gave him a letter to my agents Messrs. Wynne & Wynne of Cork who transacted the necessary business for the said John Sullivan in connection with his sister's estate. I went security to the court of probate for the said John Sullivan, my liability being for double the amount of the assets of the said Bessie Sullivan. The said John Sullivan came to Dublin and I understand called to my office, but I did not see him, he subsequently went to Belfast and stayed with Mrs. Lyons for some days. I was acting in the recent commission as solicitor for a claimant, one Mary Sullivan of Montana, but do not believe she is any relative of the deceased from the evidence given at the commission and have so advised her. I heard the evidence given at the commission and now state the facts which occurred in connection with the evidence and the reasons that make it necessary for me to make this affidavit.

I was waited on last summer in my office by two persons named Wright and Farrell, one of whom I understand is a law clerk and the other a solicitor. They stated they were acting for some claimants on
the estate, and as they stated they believed I had some letters
193 written by the deceased John Sullivan to myself and to Mrs. Lyons which they would be anxious to use in evidence, they

suggested I should have copies of the letters made for them and they would examine me as a witness at a commission to be held in Queenstown in a short time. I told them I should be paid for looking up the correspondence, making copies of same and for my attendance at the commission, and also for procuring an affidavit if they thought necessary from Mrs. Lyons. At the time I had not recived instructions from any one to act and I had not the slightest idea of the facts of the present case, and not wishing to withhold any information which might prevent a claimant from proving his or her case I agreed to accept a small fee from Wright and Farrell which they paid me, and I showed them the original letters from John Sullivan to Mrs. Lyons and to myself with which Mrs. Lyons had intrusted me and I set my stenographer to type copies of the letters from myself to John Sullivan while Wright and Farrell were perusing original letters in my office after about half hour's perusal Mr. Wright looked at his watch and said they were going to Cork by an early train and they would like to look over the letters, and I need not make copies of same as I would be examined on the letters and they would be put into Mrs. Lyons' hands for identification. I made no objection to letting them have original letters, for two reasons—one, I believed they would be put into my hands and into Mrs. Lyons' hands when we were being examined, and the second reason is that I thought I could rely on the word of a solicitor; in
194 this country it is quite safe to do so. These letters were retained by Wright and when the commission was proceeding, Wright, in reply to my inquiries for the letters, stated he had them and was arranging the order in which they would be taken up. I only attended three days of the commission as I considered my client's claim could not be maintained, and on leaving, both Mr. Wright and Mr. Howe stated the letters would be used when the commission moved to Belfast to take Mrs. Lyons' evidence, and they had also witnesses in Dublin where I reside and they would have me examined then. When I found the commission was being closed and that Mrs. Lyons was not to be examined, and I was not to be examined, I wired Mr. Donegan, solicitor, Cork, and told him to bring the facts before the consul, and cautioned Wright and Howe, through their agent, Julian, solicitor, Cork, that I would bring the facts before the court in America. The letters contained frequent reference to the fact that John Sullivan had no relatives and also contained evidence of a most material kind which, in the interest of all parties, should be put in evidence. I say that I have made a careful search in the office of public records in Ireland in Dublin, for the census returns for the years 1841 and 1851, on an accurate copy of which search marked "A" I have written my name previous to swearing this affidavit and to which I beg leave to refer. This document is taken from the filed records and can be inspected by anybody on paying a search fee. No officer in the record office can make an affidavit verifying the entry but the commissioner can
195 examine the keeper of records who will depose as to its genuineness. It shows that in the years 1841 and 1851 the Sul-

livans lived in Crone's lane and no one named Callaghan lived there. These are most accurate records from the exhibit referred to. It gives the names of the father and mother and all the children. Had Hannah Callaghan lived there her name would have most certainly appeared. Unfortunately the records for 1861 and 1871 were destroyed by fire and I could not trace further. The census returns are made every ten years in Ireland. Mrs. Lyons sent me a private letter in which she stated she had a recollection of a respectable woman who lived in Sundays Well (the opposite side of the city from Evergreen street) asking her to send a kind message to John Sullivan. I copied out this portion of the letter and handed it to Mr. Wright. Had I been examined at the commission as a witness, as I most certainly believed I would be, all this evidence would have been on record. The reason I have not referred to the letters written by me to John Sullivan and made exhibits of copies is because this affidavit is made in Cork, and I am advised by cablegram forwarded here to me that this affidavit must be forwarded by the earliest mail and the letter books in which the copies are in my office in Dublin. I will swear and forward a supplementary affidavit with copies of said letters at an early date. All the letters from John Sullivan to me and to Mrs. Lyons have been wrongfully held and retained by Mr. Wright.

EUGENE F. COLLINS.

196 Sworn before me this 12th day of April, 1902, at Riversdale, Sundays Well, in the city of Cork, a commissioner and solicitor for administering oaths in the high court of justice in Ireland, and I know deponent.

ROBERT DEYO, *Com'r.*

CORK, 12–4, 1902.

MY DEAR SIR: I received your money cable for £30 and immediately drafted & sent affidavit to Mrs. Lyons and came to Cork this morning to complete my affidavit. While in the act I received your wire and as you will see by my affidavit enclosed I will have to supplement it by copies of my letters to Sullivan or otherwise I would miss this mail. Mrs. Lyons' affidavit goes on by Thursday's mail. I hope they will have the desired effect.

I am endeavoring to catch the mail so kindly excuse this short note. I will write you fully by next.

Will you as a special favour send me the Seattle papers with an account of the proceedings so far.

In haste, yours faithfully, EUGENE F. COLLINS.

197 [Title of Court and Cause.]

Kingdom of Great Britain and Ireland, city of Queenstown, county of Cork, Ireland. Consulate of the United States of America at said place.

I, Eugene F. Collins, solicitor, 19 Eustace street, Dublin, make oath and say as follows:

1. I have attached to this affidavit copies of the letters sent by me to John Sullivan the above-named deceased.

2. I swear that all these letters appear in my letter book and were duly forwarded and sent to the above John Sullivan, deceased.

EUGENE F. COLLINS.

Sworn before me this 16th day of April, 1902, at 19 Eustace street, Dublin, Ireland, and I know the deponent, a commissioner to administer oaths in the supreme court of judicature in Ireland.

RANDANA HOWES,
Com'r for Oaths.

Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, 22 *May*, 1900.

DEAR SIR: I regret I will not be able to go down to Cork myself to look after your business, but my agents Messrs. Wynne & Wynne, solicitors, 62 8th Mall, Cork, will do everything necessary in
198 the matter. I have written them saying you will call on them tomorrow morning at 11 o'clock and I think there ought to be no delay in getting you your money. The only question which might arise will be as to someone going security for the due administration of the estate. I have written Mr. Wynne, telling him subject to certain conditions which he will give you particulars of, I will go security myself for you.

Yours faithfully,
(S'g'd) EUGENE F. COLLINS.

P. S.—Kindly show this to Messrs. Wynne.

Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, 21*st May*, 1900.

John Sullivan, Esq., Imperial hotel, Cork.

DEAR SIR: Mr. Collins will write you fully on the subject of your letter tomorrow.

Yours faithfully,
(S'g'd) THOMAS PENTONY (*Clerk*).

Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, 1*st February*, 1899.

DEAR SIR: I presume you will be surprised to hear from me again relative to the deposits in the Cork savings bank.
199 I think I can manage matters for you satisfactorily at last and am enclosing you a power of attorney and will undertake to collect the money for you without delay. I made it my business while in Cork last week to go to the savings bank and go fully into the matter with the manager and it stands this way: There are at present 2 pass books in the bank, one in the name of Eliza, your mother (or sister I don't know which) and one in the name of Ellen Silva, your sister. Now I propose to take out administration to both and have nominated myself to do this. I am at a loss to know the dates of the deaths and therefore send you only a draft power of attorney. You must set out fully who died first and what issue was left, for example:

"Eliza Sullivan, my mother or sister, died on the — day of ——, "leaving Bessie Sullivan and Ellen Silva, her two lawful daughters, "and myself, her only lawful son, &c., &c., as the case may be."

You will also want to state whether Ellen Silva or her husband died first. You can alter the power of attorney to suit the facts. Also say did your father or mother die first.

I met Mrs. Lyons a few days ago here and she was very glad to hear I was moving in this matter for you.

Yours faithfully,
(S'g'd) EUGENE F. COLLINS.

John Sullivan, Esq., Seattle, Washington, U. S. A.

200 Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, *7th April*, 1899.

DEAR SIR: I am in receipt of your letter dated 1st March, and am glad to see you are coming over here. I trust that when you do come you will put whatever business you have to do in my hands, as I have gone to a good deal of trouble in looking up matters up for you.

Yours faithfully,
(S'g'd) EUGENE F. COLLINS.

John Sullivan, Esq., Seattle, Washington, U. S. A.

Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, 2*d Jan'y*, 1897.

DEAR SIR: I beg to acknowledge receipt of yours enclosing power of attorney perfected and shall give this matter my special attention.

Yours faithfully,
(S'g'd) EUGENE F. COLLINS.

John Sullivan, Esq., Seattle, Washington, U. S. A.

201 Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, *Aug't 16th*, 1897.

Re ELIZA SULLIVAN, Dec'd.

DEAR SIR: In reply to your letter I am very sorry I have been so far unable to get your money out of the savings bank, Cork. After preparing the necessary documents Mr. Roche refused to become administrator and I have not therefore been able to secure her money. I wrote to Mrs. Lyons and asked her if she would undertake the administration, and I am awaiting her reply.

I need hardly add I am very sorry for this long delay, but it has not been through any fault of mine.

Yours faithfully,
(S'g'd) EUGENE F. COLLINS.

J. Sullivan, Esq., Seattle, Washington, U. S. A.

Copy letter E. F. Collins to John Sullivan.

TEMPLE CHAMBERS,
19 EUSTACE STREET, DUBLIN, 30*th Nov'r*, 1896.

DEAR SIR: Mrs. Lyons of Belfast has put into my hands the papers relative to taking out a grant of administration to your late sister. If you will kindly follow out the instructions I give you I think there will be very little difficulty in getting the matter
202 closed at once and sending you a check for the amount at present lying in savings bank, Cork.

In the first place I enclose you power of attorney which you will want to sign in presence of notary public, you will then forward same to me, but what I would particularly wish to know from you is whether there were any children of the marriage of your other sister as (if any) they would be entitled to a share.

I had some difficulty in getting some solvent person to act as administrator, but I succeeded in getting Mr. Roche, who is a particu-

lar friend of Mrs. Lyons, and who is a wealthy merchant here to undertake the matter for you.

Hoping to hear from you in course of mail,

Yours faithfully,

(S'g'd) EUGENE F. COLLINS.

John Sullivan, Esq., Seattle, Washington, U. S. A.

As counsel for Marie Carrau, I find it my duty to object on her behalf to that portion of the record which appears on pages 103 and 104, commencing on page 103 with the question, "Who did she ask to write?" and ending with the observation on page 104 by me, "The witness has changed her answer and I ask to have it taken down," and all questions, answers and observations, by counsel between said questions and observations, being accepted in evidence or as a true record of the proceedings for the reasons hereinafter appearing. Prior to the opening of this commission, complainants' counsel were to my certain knowledge made aware
203 that a witness, Mrs. Ellen Lyons of Belfast, who knew the deceased, intimately met a woman in Cork who addressed her as follows: "When next you are writing to John Sullivan remember me to him; he is my first cousin." When the complainant Ellen Callaghan was under examination as a witness she was asked by complainants' counsel (Mr. Julian) as to her recollection of Bessie Sullivan (page 103 of record) she said, "I spoke to her by word of mouth; I asked her when writing to John to remember Hannah Callaghan to him." Counsel for complainant sought to remove the effect of this slip by asking witness "who she asked to write"; at this moment Mr. Wright, who was sitting near the witness, prompted her in the hearing of every one present and supplied the name "Mrs. Lyons." I objected and said "Mr. Wright is sitting very close and prompting the witness," whereupon Mr. Julian said "He has moved away." Subsequently the original record and copies were in the possession of complainants' counsel and they informed me that they had detected some errors and would hand me a copy, which they would mark with the proposed alterations to approve of. They did so and I went carefully through same, and agreed to some trifling alterations that were made. There was no alteration made by them or anyone else at that time in the record as it then appeared on pages 103 and 104 when I approved of and returned the copy to complainants' counsel. The questions, answers and statements dealing with the incident were as follows:

"Q. Who did you ask to write?

204 A. Mrs. Lyons; Bessie was in the situation, not Ellen, and to Bessie all letters went.

Mr. DONEGAN: I object. Mr. Wright is sitting very close prompting all the witnesses.

Mr. JULIAN: He has moved away.

Mr. DONEGAN: The witness has changed her answer, and I ask to have it taken down."

When on the evening of the 5th December, 1901, I next saw the record new sheets had been typed and replaced the old pages 103 and 104, and are the sheets which now form the pages corresponding to those numbers in the record transmitted. I say that an attempt has been made by complainants' counsel to remove the impression from the minds of the court that any attempt was made to prompt the witness by getting the wording of my objection changed and by leaving out Mr. Julian's remark, "He has moved away."

When I discovered the alteration referred to I brought the matter under the notice of the honorable commissioner in the presence of James B. Howe, John B. Wright, Alfred Blake, solicitor, Michael O'Neill, stenographer, and John Creedon, law clerk. The said Alfred Blake and John Creedon, though representing opposite interests to me in the case, admitted that in their recollection the words, "Mr. Wright is prompting the witness," and "He has moved away," as they appeared in the first transcript of the report, were used by me and Mr. Julian respectively. Mr. Howe and Mr. Wright held contrary views and the commissioner, the Hon.
205 Daniel Swiney, then stated that he had a distinct recollection that such words as "Mr. Wright is prompting the witness" were used by me, and also that Mr. Julian said, "He has moved away."

I say that I was notified by said complainants' attorneys at 6 o'clock p. m. on Friday, the 6th inst. of sitting to be held at Queenstown at said commissioner's office at 10 o'clock on Saturday, December 7th, 1901, and thereupon informed said complainants' attorneys that the hour and time appointed would not suit me and asked them to fix another time which they consented to do. I say that I believed no further notice in the matter other than a letter from the said Mr. Howe informing me that the record had been mailed to America and a letter from the hon. commissioner to the same effect, in which said letter said commissioner informed me that said Mr. Howe had left with him a written statement bearing on the incident hereinbefore referred to, to be forwarded by said commissioner to the court, together with a statement of the views of said commissioner and this statement of mine, the whole to form a supplement to the record. I say that notwithstanding that complainants agreed to fix a time later than Saturday, the 7th inst., when I could be present at the close of the commission, they willfully availed of my inability to attend on that day named and at the hour fixed on said day, viz: Saturday, the 7th, December, 1901, they attended on said commissioner and urged him to close said commission notwithstand-
206 ing the dispute as to the regularity of the record. I therefore respectively say that said record as so forwarded by said commissioner is not a true copy of the proceedings as required by the honorable circuit court of the United States and I pray that they may so rule and decree. I charge that the alterations referred to change the sense and convey a different meaning to what was intended. I charged the said John B. Wright with prompting a wit-

ness and I further charge the said John B. Wright and James B. Howe with wrongfully appropriating certain original letters which were letters written by the deceased John Sullivan to the Ellen Lyons hereinbefore referred to, in some of which letters appear matters prejudicial to the case of complainants. Said letters were lent to said complainants' attorneys for the object of being copied by them and made testimony in the case, and though said complainants closed their case without making evidence of said letters or examining the said Mrs. Lyons and were applied to — return same to the solicitor who lent them for the purposes aforesaid, they refused to give them back, I say that said letters are improperly in their possession and I pray this honorable court to direct that same and more especially those dated the 19th May, 1900, 30th May, 1900, and 12th September, 1900, may be impounded in court in order that they may not *to* re-
207 main in the hands of persons whose interest it is that they should not appear in evidence.

(Signed) HENRY P. F. DONEGAN,
Solicitor and Counsel for Marie Carrau.

Henry P. F. Donegan, solicitor, land & insurance agent.

Telephone No. 333.

Offices, 90 South Mall.

CORK, *March 29th*, 1902.

Re JOHN SULLIVAN, Dec'd.

DEAR SIR: I duly received the sum of £30 and cabled you that documents would be forwarded without delay. I regret beyond measure that you have put it outside my power to procure the evidence of Mr. Collins and Mrs. Lyons by not sending the money Collins stated you promised to send him. You can judge the position from the copy of his letter which I enclose you herewith. Judging from yours of the 4th March just received it would appear to me that you have not examined the transcript of the evidence taken at the commission, otherwise you would not at this stage suggest that John Sullivan came from Bandon, or that his father married a second time.

There is a great deal of complainants' case which must be accepted as common case. I refer to all that portion relating to the parentage and the sisters of John Sullivan. I enclose for
208 your guidance a table showing the case made by complainants. You will note that it is relied on by them that there were originally four sisters named respectively Abegail, Mary, Bridget and Margaret McAuliffe, from whom sprung respectively the deceased, the Riordans, Hannah Callaghan and Ed. Corcoran. The evidence of the witnesses for the complainants show- that these

four women came from Carrigaline, in the county of Cork. The table will show you fully how the relationship of the complainants is traced. I have given the dates of certificates as they were put in evidence. Now with regard to the weakness in their case. They merely relied on oral evidence that the four McAuliffes were sisters, and never sought to put in any proof beyond this in the direct. Seeing this weakness I went to Carrigaline and traced up the records and found that there was an entry of baptism of a Margaret McAuliffe in the year 1810, her parents being Daniel McAuliffe and Mary Murphy; looking back I found a Bridget McAuliffe was baptized in the year 1804, but her parents' names were Denis McAuliffe and Mary Murphy. The records contain many entries of the name of Mary Murphy which was and is a very common name in the district; therefore it is not peculiar that the names of the mothers were in each case identical. There was no record of the baptism of an Abegail, Abina or Abbey (considered the same name) nor of a Mary McAuliffe, between the years 1804 when the record begins and 1820 (see page 225 of the transcript.) There was an entry of the baptism of
Hanora McAuliffe, daughter of Daniel McAuliffe, and Mary
209 Murphy. I wish to make it clear to you that prior to 1864 in Ireland there was no legal system of registration of birth, the records of baptism of the Catholic church have been accepted as evidence in all our courts. You will see that I recalled Canon Carey and had his evidence taken, and put in certificates of the baptism of Hanora, Margaret and Bridget, and negative certificates against entries affecting either Abegail or Mary. Now you will see that Mr. Howe sought to cross-examine Canon Carey with a view to showing that the name "Denis" was a mistake for "Daniel" in the entry of Bridget's baptism, you can judge with what effect by referring to the record. It must strike you that at the root of their case there is a rottenness when they had to impune the records from which they extracted nearly all their certificates put in evidence in the early stage. However, you want fact and not comments from me. I will therefore proceed. Mark well the birth of Bridget McAuliffe (since they adopted her as Hannah's mother) took place in 1804; now here's another difficulty for the claimants—it was stated by several of the witnesses that Hannah's mother died in the Cork Fever Union hospital and that after her death Hannah, who was then a child, was taken by her aunt Abbey to live in Crone's lane.

I anticipated that proof of this would be given by production of the records of that institute when I saw the name of the clerk John Cotter in the list of their witnesses supplied to me, yet they closed
without examining him. I at once went to the Union and
210 discovered from the records that a Bridget Callaghan was admitted the 9th Dec'r 1848 and died on the 1st May, 1849, she was described as a widow and a mendicant, aged 30. She had two children with her in the Union: Timothy aged 10 and Johannah 6—compare the dates of certificates put in—Hannah's mother was born according to their contention on the 24th October, 1804;

they saw the difficulty of examining Cotter at the last moment and therefore declined to prove her death. She was 33 on the first May 1849 according to the Union record, and it was relied on throughout that Hannah's mother died at the time and place stated, and there is no other entry in the year 1848 or 1849 of the death of a Bridget Callaghan—I think her identification as the mother of Hannah is complete. There were therefore two Bridget Callaghans or the entry of the age of 33 is an error; and if the other side contend that is so and that the age of the woman, who according to them was 45, was wrongfully described as 33, they are met by the entry of the age of Johannah or Hannah, as six whereas they having put in a certificate of her birth on the 26th March, 1837, she should have been 11 if the certificate was right. Add to all this confusion of dates, the fact that Hannah Callaghan see page 111 could not tell me when her father and mother were married, or when she was born herself. She did say in answer to a question "Where were you born?" that Mr. Wright had to go to Carrigaline for her baptismal lines. You will see but for Mr. Wright she and most of the witnesses would have remembered very little. If you
211 carefully peruse the record of evidence you will see that it teems with contradictions.

In order that you may not be lead astray let me tell you that there appears to be no doubt.

1st. That John Sullivan, deceased, was the child of Peter Sullivan and Abbey McAuliffe, and brother of Bessie Sullivan and Ellen Silva.

2d. That Edward Corcoran was the child of the marriage of a John Corcoran and Margaret McAuliffe of Carrigaline.

3rd. That Hannah Callaghan was a child of the marriage of William Callaghan and Bridget McAuliffe.

What must be contended for Marie Carrau is:—

1st. That there is no evidence that any of the claimants bear relationship to the deceased they allege beyond the statements of a number of interested people all of whom have been in the receipt of money from one or other of the attorneys for the complainants.

2nd. That the Carrigaline parish church records show that there were three families of the name of McAuliffe in the beginning of the 19th century, but that there could not have been four sisters of the name mentioned.

3rd. That in the year of 1821 there was only one family of the name of McAuliffe in Carrigaline and that the names appearing on the census returns for that year (the first year of census in Ireland) were as follows:

212 I made this myself in the public record office in Dublin.

H. D.

No. of house.

62. Parish of Carrigaline Co. Cork, barony of Kerricurrihy.

Margaret McAuliffe, aged 49			
Margaret McAuliffe, daughter, aged 11			
Dan	do.	son aged 16	Labourer
John White son in law,	"	27	
Mary McAuliffe, daughter	"	4	
James	do.	son "	1

NOTE.—There is no mention of an Abegail or Bridget, & as there was another daughter and she married John White, the record is in our favor.

H. D.

That Margaret McAuliffe aged 11 who was born in 1810 and who subsequently married Corcoran and became the mother of Edward there can be no doubt, but that she was a sister of Abegail or to Bridget there is no proof whatsoever.

With regard to the evidence of Mooney let me inform you that he has declined throughout to give evidence unless he receives a fee of £10:00 I had great difficulty in getting him to swear the affidavit enclosed, and had to pay him £2:2 for so doing, and at the same time gave him to understand that the balance of the fee mentioned would be paid him before he would give evidence on the commission. In the face of what Messrs. Howe and Wright know it is ridiculous to suggest that his evidence was not procurable in November, money was the only bar, and you must not blame
213 me. I gave you ample time and did my best for you and Marie Carrau's interest. If you wish for further information on this score apply to Mr. Riddle.

The same remark applies to Cotter. I could not get him to attend without a fee at the time, and have had to pay him £1 : 1 : 0, for the present certificate and affidavit. The only point you can go on is that the names of these two were included in the list served to me by Messrs. Piles, Donworth and Howe, of witnesses they intended examining and I had a right to suppose they would be examined. As to Mr-. Lyons' evidence I know she will disprove the evidence of Hannah Callaghan as to having met and spoken to her. She can prove the receipt of the letters from John Sullivan (which you are aware were stolen by Mr. Wright). Fortunately when Mr. Collins was in Cork I copied some of them and I enclose copies herewith. You can judge of the importance of examining Mrs. Lyons and Collins and making evidence of these documents from their contents. The last letter written from Seattle on the 12th September, 1900, is to my mind one of the most important documents in the case, as it bears out Marie Carrau's statements. I regret beyond measure, that

you have not sent Mr. Collins his fee, he would have been able to swear a strong affidavit himself and procure one from Mrs. Lyons which I am sure would have enabled you to procure the fresh commission. I endeavored to find out from a man named Michael Sullivan who is I believe making a claim as a second cousin,
214 whether or not he could disprove Hannah Callaghan's statement that she was related to John, but I found he knows nothing whatsoever of her.

Yours faithfully, HENRY P. F. DONEGAN.

Mr. W. F. Hays, attorney at law, Seattle, Wash., U. S. A.

CORK, *May 19th*, 1900.

DEAR MRS. LYONS: You will be surprised at knowing that I am in my old home Cork after an absence of forty years. I arrived this morning the first thing I did after registering my name at the hotel was to walk along the Grand Parade and Patrick's street, the streets do not look quite familiar to me as yet, but will after a short acquaintance. I have written to Mr. E. F. Collins today and will have him to look after the money in the bank which belong- to my deceased sisters Ellen and Bessie. I am on the way to the Paris Exposition and hope to have the pleasure of seeing you before long.

Very truly yours, JOHN SULLIVAN.

Ellen Lyons.

[NOTARIAL SEAL.] WILLIAM KILMARTIN,
Notary Public.

IMPERIAL HOTEL,
PEMBROKE STREET, CORK, *May 30th*, 1900.

DEAR MRS. LYONS: Your very kind letter of the 21st inst. was received. I was very much pleased to know that I am not a
215 stranger in Ireland. I am certainly one in Cork. I have not found any person in Cork that I know. I called on Mr. Breton Patrick's street jewellers, and found the grandson managing the business all the rest were dead. I worked for the grandfather. I have been out to the lakes of Killarney. I will tell you what I think of the lakes when I see you next Saturday.

Yours very truly, JOHN SULLIVAN.

Ellen Lyons.

[NOTARIAL SEAL.] WM. KILMARTIN,
Notary Public.

SEATTLE, WASHINGTON, U. S. A.,
September 12th, 1900.

DEAR MRS. LYONS: You will see that I am at my own home. I arrived here a short time ago after a very enjoyable trip. Business

is very good here, my building is full of tenants and of course I am getting a good rental from the building. Other properties which I have are increasing in value. Do not be surprised when I say that I am going to leave for Paris the last of this month. I will spend the winter there. When the weather gets cold in Paris I will go down to Monte Carlo. I just received the money from Wynne & Wynne lawyers of Cork, one hundred and fifty-three pounds 12–10. I brought the enclosure with me from Paris. I am learning French, do not be surprised if I should write my next letter to you in French.

Hoping you are enjoying the best of health. Give my kind-
216 est regard to your children; their names have slipped my memory at this writing.

I am, very truly yours, JOHN SULLIVAN.

Ellen Lyons.

[NOTARIAL SEAL.] WM. KILMARTIN,
Notary Public.

[Title of Court and Cause.]

Kingdom of Great Britain *of* Ireland, city of Queenstown, county of Cork, Ireland. Consulate of the United States of America at said place.

I, Ellen Lyons, of 8 Lower Crescent, Belfast, in the county of Antrim, aged 21 years and upwards make oath and say as follows:

1. I was born in Cork where I resided for many years before I came to live in Belfast.

2. I was acquainted with the late John Sullivan of Seattle, Washington, and corresponded with him for many years. I became acquainted with him under the following circumstances: I had in my employment a domestic servant named Bessie Sullivan, a sister of John Sullivan, the above deceased. This servant was with me for 20 or 21 years, and eventually became insane, and it became necessary for me to put her into an asylum. I had at that time the address of her brother, the said John Sullivan in Seattle, and my brother-in-law communicated with him, as I never heard of the said Bessie Sullivan having any relation except John.

217 3. To the best of my recollection, during the many years she was in my employment, she never spoke of any relatives except her parents and her sister Mrs. Silva, and her brother John, and no one claiming to be a relative, to the best of my recollection, ever called to see her while she was with me, or interested themselves in her affairs when the said Bessie Sullivan was put into the asylum.

4. I called several times to see her in the asylum, but never met anyone claiming to be a relative visiting her there.

5. In the course of communication with the said John Sullivan I

told him that I had put his sister in the asylum, and he seemed very pleased, and I kept up correspondence with him from time to time.

6. The said Bessie Sullivan died and had a considerable sum of money to her credit in the savings bank in Cork, and as I believed John Sullivan was not well off and that the money might be of some use to him I communicated the facts to him and suggested he should take out administration, and I gave him the name of a solicitor in Dublin who would be likely to act for him, and I am informed and believe he had correspondence with the said solicitor on the matter.

7. In the year 1900 I received a letter from John Sullivan from the Imperial hotel in Cork stating he had come over and would take steps to get the money out of the savings bank. I understand Mr. Collins, solicitor, will explain why I have not this letter or any other letters written to me by the deceased now in my posses-
218 sion.

8. I beg to refer to a copy of the said letter upon which marked "A" I have endorsed my name when swearing this affidavit. I also beg to refer to two other letters written by the deceased to me—one from Cork, and the other from Seattle after his arrival there in the year 1900—

9. The said John Sullivan after a short stay in Cork came to Belfast and stayed at my house for some days and never mentioned anything to me about his having had any relatives. I believe he would have made some mention of them, as he told me nearly all his history, and in his letters relative to his sister's money he always stated he was her only relative.

10. I am informed and believe that a commission was held in Cork to inquire into the relatives, if any, of the deceased, and that a woman named Hannah Callaghan stated that she called on me and asked me to remember her to John Sullivan. I have a recollection on one occasion many years ago of some one speaking to me in the street in Cork, and asking me to send a kind message—or words to that effect—to the said John Sullivan. The person who spoke to me was a very respectable looking woman who lived, I thought, in Sunday's Well, Cork, and having heard the description of the present claimant I do not believe she could be the same person—that is, of course, assuming the description I received is correct, namely, that Hannah Callaghan is a beggar woman in Cork and of intemperate habits and has been so for years; and if I had an opportunity of seeing the claimant I might probably be able to identify her.
219 I understood I was to be examined as a witness at the commission held recently in Cork. However, I am informed the commission concluded my evidence not being called for. I have absolutely no interest in the matter further than to state the facts, and I would willingly give any evidence I have to assist any legitimate claimant. At the time the commission was held in Cork I was recovering from the effects of a broken leg, and I understood the commission would travel to Belfast or Dublin to take my statement.

11. I remember hearing from John Sullivan that up to the time he left Cork he was in Mr. Bretton's shop in Patrick street, and in his letter to me from Cork—a copy of which I have exhibited—reference is made to that effect, and also to the fact that it was just forty years since he left Cork. I take it, therefore, that it would have been in 1860 or 1861.

ELLEN LYONS.

Sworn before me this 16th day of April, 1902, at 39 Rosemary St., in the county of the city of Belfast.

[NOTARIAL SEAL.] WM. KILMARTIN,
Notary Public for the City of Belfast and County of Antrim.

220 DEFENDANT'S EXHIBIT—INCONSISTENCY OF CLAIMS OF HEIRSHIP.

How the records ought to be if complainants were true heirs:		How the records are:	
Mother	Mary Murphy	Mother	Mary Murphy
Father	Daniel McAuliffe	Father	Daniel McAuliffe
Daughter	Margaret McAuliffe	Daughter	Margaret McAuliffe
Mother	Mary Murphy	Mother	Mary Murphy
Father	Daniel McAuliffe	Father	Denis McAuliffe
Daughter	Bridget McAuliffe	Daughter	Bridget McAuliffe
Mother	Mary Murphy	Mother	Mary Murphy
Father	Daniel McAuliffe	Father	Daniel McAuliffe
Daughter	Abigail McAuliffe	Daughter	Hanora McAuliffe
Mother	Mary Murphy	No baptismal entries of either Mary or Abigail	
Father	Daniel McAuliffe		
Daughter	Mary McAuliffe		

[Duly filed May 17, 1902.]

(Here follows table marked p. 221.)

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

222 & 223 [Title of Court and Cause.]

Order Denying Application for Issuance of Commission to Take Depositions in Ireland.

On hearing the application of Marie Carrau, made this 19th day of May, 1902, for a commission to examine certain witnesses, heretofore named in a previous application made by the said Marie Carrau, it is ordered that said application be, and the same is hereby, denied.

Dated May 19, 1902.

C. H. HANFORD,
Judge of the District Court of the United States, Presiding in the Circuit Court of the United States.

To the foregoing order, and the whole thereof, the defendant Marie Carrau excepts, and her exception is allowed.

Dated May 19, 1902.

C. H. HANFORD, *Judge.*

[Duly filed May 19, 1902.]

[Title of Court and Cause.]

Opinion.

Suit in equity by subjects of the King of Great Britain, residing in Ireland, for a decree establishing their rights as the legal heirs of John Sullivan, deceased, and to set aside and annul an alleged
224 nuncupative will of said deceased, and a decree of the superior court of the State of Washington for King county admitting the same to probate.

C. H. Farrell and Piles, Donworth & Howe, for complainants.

W. F. Hays, Joseph W. Robinson, and J. P. Houser, for defendant Marie Carrau.

HANFORD, *District Judge:*

This case involves a controversy as to who shall succeed to the title and enjoyment of an estate amounting in value to, probably, $500,000.00, left by John Sullivan, who died in the city of Seattle, September 26th, 1900, which estate is now in the custody of the defendant, Terrence O'Brien, under an appointment as administrator by the superior court of the State of Washington, for King county. The administrator makes no controversy with any of the claimants, and this case is defended only by Marie Carrau, who claims the entire estate under a nuncupative will alleged to have been made by the deceased in her favor, and which by a decree of the

superior court was admitted to probate, as the last will and testament of the deceased, on the 8th day of March, 1901.

At every stage of the proceedings, the defendant, Marie Carrau, has disputed the jurisdiction of this court to take cognizance of this case for any purpose. Her objections have been overruled by the court, and still in their argument upon the final hearing, her solicitors have made an elaborate argument, maintaining that the
225 department of the superior court which has jurisdiction of probate matters, has the exclusive jurisdiction of all questions litigated in this case, and that a Federal court is not authorized to encroach upon that jurisdiction, and that this court cannot proceed to determine any of the questions involved because persons not appearing or represented in the case claim to be interested in the estate, and they are indispensable parties, and that a court of equity cannot take cognizance of a proceeding to determine questions as to the genuineness or validity of an alleged will of a deceased person, and that even if this court has jurisdiction of this case it can be at most only concurrent with the jurisdiction of the superior court, and as this case was not commenced until after the initiation of proceedings in the superior court, the final judgment and decree of that court must avail and have controlling effect in the final determination of all matters involved, and therefore this cause should be dismissed because it is a useless and vexatious proceeding.

Referring to the last of the several propositions supported by defendant's argument, it is enough to say that in a case of which by the Constitution and laws of the United States, this court is given jurisdiction concurrent with the jurisdiction of a State court, the parties have an absolute right to invoke that concurrent jurisdiction, and this court has no right to refuse them a hearing because of the pendency of a prior suit in a State court between the same parties for the same cause of action. It was so determined, and the law settled, by the decision of the Supreme Court of the
226 United States, in the case of Stanton *et al. v.* Embrey, administrator, 93 U. S. 548–558.

All of the other propositions have also been passed upon and decided adversely to the contentions of the defendant by the Supreme Court of the United States and by the circuit court of appeals for the ninth circuit, and as the courts of last resort have settled the law, it would be unbecoming for this court to discuss the questions further. Every point made in the defendant's argument has been squarely met and fully answered by the opinions in the cases of

Payne *v.* Hook, 7 Wall. 425.
Gaines *v.* Fuentes *et al.*, 92 U. S. 10–22.
Byers *v.* McAuley, 149 U. S. 608–621.
Richardson *v.* Green, 61 Fed. Rep. 423–436; S. C., 159 U. S. 264.

Later decisions of the Supreme Court have been cited, showing, only, that general principles have been applied to facts entirely different from this case, and it is contended that the same general

principles, if applied, must exclude this case from the jurisdiction of this court. But the cases which are in point have not been overruled, and this court will not discuss the question whether they ought to be overruled or not.

There is another preliminary question to be disposed of before proceeding to a consideration of the case on its merits. The complainants claim to be first cousins and next of kin to the deceased, John Sullivan, who was an Irishman by birth, and to obtain
227 evidence with respect to their relationship to the deceased, the court issued an open commission, authorizing the examination of witnesses in Ireland, who might be called by either party, and after the return of the commission with the depositions taken thereunder, the defendant, Marie Carrau, made an application to the court for a new commission to issue, for the purpose of examining other witnesses to disapprove the claims of the complainants, which application was supported by affidavits and opposed by counter-affidavits. After hearing the matter, the court filed a written memorandum of its decision, which was in part as follows:

"In support of the application now made for a commission to take depositions on interrogatories, an affidavit has been filed by Marie Carrau stating upon information and belief, that certain persons residing in Ireland can give testimony material to the issue and tending to disprove the claims of the complainants, and alleging that the witnesses were not known and their evidence was not discovered until after the return to this court of the commission heretofore issued for the taking of depositions in Ireland. * * *

In this case, a valuable estate appears to be without an owner, and the prize is a strong temptation to set up claims which may be unfounded in fact and law. The court should proceed with caution and deliberation and I am inclined to allow ample latitude for the introduction of material evidence brought forward in good faith. I consider, however, that in view of the opportunities which
228 Marie Carrau has already failed to improve for obtaining the testimony of witnesses named in her affidavit, that an application such as she now makes to the court should be supported by a strong showing including affidavits of the proposed witnesses, setting forth substantially such material facts as may be within their knowledge and certified copies of the records, if there are any, which may tend to prove or disprove the claims of the complainants with respect to their relationship to the deceased John Sullivan.

The present application will be denied, but I will grant leave to renew it, if with reasonable promptness, such supporting evidence and certified records shall be offered. If that is done, counsel may expect that the court will order an open commission to issue for a full examination and cross-examination, and the applicant will be required to deposit in court the sum of $500.00 to reimburse the complainants' counsel who may be employed in Ireland or sent from Seattle to attend the examination of the witnesses."

Acting upon the intimation of the court in the quoted part of the

above-mentioned memorandum, the defendant has renewed her application for a second commission to issue, supported by a showing of the new evidence obtainable, and upon the hearing thereof the court made an order, *pro forma*, denying the renewed application, reserving, however, the right to make a different order if, upon consideration of the evidence on the final hearing it should then appear to the court that, in fairness to the parties and to promote the ends of justice an opportunity should be given to obtain new evidence.

229 Having given due consideration to the showing made, the arguments of counsel, and the entire evidence in the case, I have now reached a definite conclusion, and it is my opinion now that another commission should not be issued, for the reason that it would be a useless burden upon the parties. It is my opinion that each of the witnesses to be examined if the commission should issue, and all the record evidence shown to be obtainable, would make as much for, as against, the complainants, and would not change the result in any particular.

One of the proposed witnesses, John Cotter, shows by his affidavit that he is a clerk of the district council and of the board of guardians of Cork, Ireland, and that a record in his keeping shows that Bridget Callaghan, a widow, mendicant, 30 years of age, Timothy Callaghan, 10 years, and Johanna Callaghan, 6 years of age, were all admitted to the workhouse December 9th, 1848, and that Bridget died May 1st, 1849, and shows nothing as to what became of the two children. There is nothing in this record, excepting the place where it exists, and the similarity of names, to connect it in any way with the complainant, Hannah Callaghan. It is not a record of such absolute verity as to prove the church record, showing the dates of the baptism of complainant Hannah Callaghan in the year 1837, of the marriage of her parents in the year 1830, and of the baptism of her mother in the year 1804, to be erroneous, nor would it prove that notwithstanding the disparity in ages, the Bridget Callaghan and Johanna Callaghan who were in the workhouse in

230 1848 and 1849 are the same Hannah Callaghan, the complainant in this case, and her mother, Bridget Callaghan. As a mere scrap of evidence, unconnected with any material fact in the case, it can have no influence whatever in shaping a decision.

The affidavit of James J. Mooney, clerk in the office of Wynn & Wynn, lawyers, of Cork, shows that when John Sullivan, deceased, a few months before his death, was in Cork, attending to the business of administering upon the estates of his two deceased sisters, he, Sullivan, told Mooney that if he had any relatives in Cork he would give them the money, and also said that he had made a visit to Evergreen, looking for any of his friends, but he met none there, and that he did meet a person who claimed relationship, but the claim was repudiated. The affidavit states no fact connecting the person whose claim of relationship was repudiated by deceased with either one of the complainants, nor with any witness who has testified for

them, and it is of no more value as evidence in the case than other declarations of Sullivan, proved by the testimony of J. C. Floyd and others, denying that he had any relatives living, or that he had any knowledge of any living relatives, at a time when, according to the incontestable evidence in the case, his father and mother and two sisters were in fact living in the place where he had left them.

The most important part of the affidavit of Eugene F. Collins, solicitor, of Dublin, another of the proposed witnesses, relates to the conduct of the attorneys for the complainants, showing that Mr. Collins accepted a "small fee" for exhibiting to Mr. Wright and
231 Mr. Farrell, representing the complainants, certain original letters, written by John Sullivan, to Mrs. Lyons of Belfast, and to himself, and that, contrary to promises made by Wright and Farrell, and afterwards by Mr. Howe, one of the solicitors for the complainants, the letters of Mr. Sullivan were not introduced in evidence under the commission for taking testimony in Ireland, nor returned to him. This testimony might be very important if the Sullivan letters referred to had been obtained for the purpose of suppressing material evidence in this case, but as a matter of fact, the letters are all accounted for. They were brought to Seattle, the handwriting of Mr. Sullivan proved, and were introduced in evidence as a link in the chain of circumstances tending to identify the deceased, John Sullivan, as the son of Peter Sullivan and Abbie, or Abina, Sullivan, *née* McAuliffe. To the affidavit of Mr. Collins there is also attached a copy of the census returns for the years 1841 and 1851, which shows that in the year 1841 there was a family residing in Crone's lane, consisting of Peter Sullivan, aged 31 years, Abbie, aged 30 years, Elizabeth, 7-6 years, Ellen 4-6 years and John 1 year, and that the same family were still living there 10 years later, the ages then being stated as follows: Peter Sullivan, 40 years, Abbie, 40 years, Eliza. 17, Ellen 15, and John 12. The only possible value which this record can have as evidence in the case is to corroborate the other testimony tending to prove that the John Sullivan, whose estate is in controversy in this case, was in fact a son of Peter and Abbie Sullivan, who, at the time of his birth, in
232 the year 1840, lived in Crone's lane, Cork, Ireland. The use which counsel for the defendant think they can make of this record is to rebut the evidence in the case tending to prove that the complainant, Hannah Callaghan, lived as a member of the family of Peter and Abbie Sullivan, from the time of the death of her mother, Bridget Callaghan, until the death of Peter Sullivan in the year 1873, and that she carried Peter Sullivan's breakfasts to him in the year 1848. But this is not a matter of great importance, for, conceding that the census returns in Ireland are infallibly accurate, this evidence would only prove an error in Hannah Callaghan's testimony as to the time when she became a member of the Sullivan family, and it would not rebut the testimony of the fifteen disinterested witnesses, all relatives and neighbors of the family who have testified that Hannah Callaghan did live for many years

in the family, and was reputed to be and recognized as a niece of John Sullivan's mother. If Hannah Callaghan was three years out of the way in her evidence as to the time when she went to live with the Sullivans, that variance from the truth is not more serious than the transparent errors in Mr. Collins' affidavit. He describes himself as a person twenty one years of age, although his own letters, which he seems anxious to introduce into the case, show that he was a solicitor in Dublin in the year 1896. He also swears that the first of John Sullivan's letters to him contained a statement that "there were no relatives of his sister alive, that he was her only relative." The letter is in evidence, and it contains
233 no denial of other relatives. The following is what John Sullivan did write to Collins: "My deceased sister Ellen, who was married, had no children, I am her only heir."

Justice requires that the decision of an important cause should rest upon something more substantial than mere errors or discrepancies in the testimony of human witnesses, as to unimportant details. If witnesses were to be impeached by mere inaccuracies in their testimony, I would feel obliged to reject the affidavit of Mr. Collins entirely, and if the census returns are infallible, and if Hannah Callaghan did not live with the Sullivan family, as she claims, they must show where she did live, and I have a right to presume that a witness interested and anxious to defeat the complainants in this case, as Mr. Collins shows himself to be, would, if he could do so, bring to the attention of the court substantial and important facts, instead of incumbering the case with records which are not at all relevant, unless for the purpose of proving a mere inaccuracy in the testimony.

Mr. Collins also wants to contribute his mite towards proving that Mr. Sullivan in the year that he died made declarations disowning his kindred. This evidence, as I have already remarked, is not good to overcome the positive testimony of those who show that they were in a position to know and did know Sullivan, in his infancy, and did know his parents, sisters, and the complainants, during many years, and associated with them as neighbors, and dealt with them in different ways.

234 The affidavit of Mrs. Lyons, of Belfast, shows that Bessie Sullivan, sister of John Sullivan—who is, no doubt, the identical "Elizabeth" and "Eliza" Sullivan referred to in other parts of the testimony and the proposed testimony—was a domestic servant in her house for twenty years, or more, and she never heard mention of Hannah Callaghan or Edward Corcoran, or any one else as relatives of Bessie, excepting her own sister and brother John. Mere negative testimony of that sort is more wearisome than advantageous to the party offering it. It is not hard to imagine that Bessie Sullivan, by refraining from introducing her poor relatives to her mistress may, by her forbearance in that respect, have won consideration which materially enhanced the value of her services; mere selfishness on her part, corresponding to the trait of character

in John Sullivan, which caused him to deny to his friends in this country that he had relatives or friends in Ireland, at a time when his father and mother and sisters were living there, would not have a feather's weight in opposition to the positive testimony of unimpeached witnesses to the contrary.

Mrs. Lyons did not know Sullivan personally, until he revisited his native land a few months before his death, and her affidavit shows that during the few days which he spent as a visitor at her house, she learned nothing of a positive nature with reference to his relatives. A few letters had been written previous to that time by Sullivan to Mrs. Lyons, and to her husband, and they
235 had written to him. But it is unnecessary for Mrs. Lyons to be a witness in order to prove the letters. They are in the case, and they speak for themselves. In their argument, counsel for Marie Carrau attach considerable importance to the testimony Mrs. Lyons may give to contradict a statement by Hannah Callaghan to the effect that years ago she called upon Mrs. Lyons at her house, and requested her, when writing to John Sullivan at Seattle, to give him her regards, saying that John Sullivan would know who Hannah Callaghan was. But her affidavit shows that the only positive testimony which Mrs. Lyons can give relating directly to that matter would tend to corroborate Hannah Callaghan. She says: "I have a recollection, on one occasion, many years ago, of some one speaking to me on the street, in Cork, and asking me to send a kind message, or words to that effect, to said John Sullivan. The person who spoke to me was a very respectable looking woman, who lived, I think, in Sunday's Well, Cork, but having heard the description of the present claimant, I do not believe she could be the same person. That is, of course, assuming the description I received as correct, namely, that Hannah Callaghan is a beggar woman in Cork, and of intemperate habits, and has been so for years." According to this statement, it is true that Mrs. Lyons was requested to send a message similar to that referred to in Hannah Callaghan's testimony, it was a woman who made the request, and it was many years ago. The only important difference between her statement and that of Mrs. Lyons is that the request was
236 made at Mrs. Lyons' house, instead of upon a street in Cork. Hannah Callaghan claims that she was the woman who made the request. Mrs. Lyons certainly cannot contradict her, because she does not know the person who made the request, and she does not know Hannah Callaghan, but only supposes the request to have been made by a different person, because it was made by a "respectable looking woman," and certainly she cannot testify now that Hannah Callaghan was not at that time a respectable looking woman, and does not propose to do so, except by injecting into the case second-hand and hearsay reports that Hannah Callaghan is and has been for years a beggar woman of intemperate habits. It seems to me the court should not be called upon to spend time in giving serious consideration to a mere supposition, based upon hearsay.

The only other matters of any importance contained in the affidavits and correspondence in support of this application are explanations by Collins and Donegan, who were employed to represent Marie Carrau, in taking evidence under the original commission, of their reasons for not securing additional testimony at that time, one excuse being that they expected counsel for complainants to call as witnesses and examine some of the very persons who are now brought forward as witnesses adverse to the complainants, and another excuse is that they were disappointed in not receiving the amount of money which they demanded from Mr. Hays, solicitor for Marie Carrau, for their services and contemplated expenses to be in-
237 curred in her interest. Upon the showing made, the court cannot do otherwise than confirm the order heretofore made denying this application.

Passing, now, to the consideration of the merits of the case, I hold that it is necessary for persons residing in a distant land, claiming a valuable estate situated here, as collateral heirs of the decedent, to make out their case by convincing proof, and that the court should be cautious in reaching a conclusion favorable to the claims of these plaintiffs. But, after reading and pondering over the depositions taken in Ireland, and the exhibits, and the few scraps of testimony obtained from witnesses who knew John Sullivan during the years of his residence in Seattle, I am obliged to say that the complainants have done more than to simply bring forward evidence justifying a surmise that they may be the nearest living relatives of the deceased. Their case rests upon positive and direct testimony, corroborated in so many different ways that I must yield to the belief which it creates. I cannot say that the combination of facts and circumstances proved make a case entirely free from any flaw. That would be impossible. But the few discrepancies and apparent defects are such as naturally arise from the proneness of human beings to commit errors, and do not destroy the fabric. I deem it unnecessary to rehearse the testimony, which is voluminous, nor to comment on particular portions of it. It is enough to say that I am convinced by it that each of the complainants bore the relation to John
238 Sullivan of first cousin, they being a son and daughter of different sisters of John Sullivan's mother, Abbie Sullivan, *née* McAuliffe, and that when Sullivan died there was not then living any other kindred of his of a closer degree. It is proved conclusively that Sullivan died without ever having been married, that he left surviving him no issue, nor father, nor mother, nor brother, nor sister, nor child or children of any deceased brother or sister, nor brother or sister of either of his parents. The decree to be rendered will establish finally that the complainants are entitled as the next of kin and heirs of John Sullivan to share in the distribution of his estate, but will not pronounce that they are the only heirs nor assume to dispose of the claims or persons not parties to this suit, if there are any such, entitled to share in the distribution of the estate as relatives of the deceased in the same degree as the complainants.

By proving that they are heirs and interested in the estate, these complainants have gained a standing entitling them to controvert the claims of Marie Carrau, as to the genuineness and validity of the alleged nuncupative will. I have reached a conclusion that makes it unnecessary for me to express an opinion upon the questions which have been debated as to the right of an owner of real and personal property, under the statutes of this State, to make a testamentary disposition of the same by a nuncupative will. This court has been asked to decide that certain statutes making changes in the original statute of Washington Territory, enacted in the year
239 1854, relating to wills, are void, but the court is not obliged to take the responsibility of declaring statutes which have been formally enacted and promulgated to be null and void when the justice of the case does not require it.

The lawful heirs of a deceased person should not be disinherited by a nuncupative will unless the prescribed forms of law for establishing such a will are carefully observed, and strictly conformed to, nor unless it be proved to be genuine by evidence strong enough to create a belief in an unbiased and receptive mind that the necessary words were spoken with an intent thereby to make a testamentary disposition of the testator's property. Having that principle in mind, the evidence in this case falls short of meeting the requirements. All the evidence in the case which in any way tends to prove the will consists of the testimony of Marie Carrau, the beneficiary, and three of her nearest relatives. They all testified exactly alike, as to the precise words spoken by Sullivan. They all testified exactly alike, to the fact that they understood Mr. Sullivan to mean by those words that he had previously made a will giving all his property to Marie, and they all made exactly the same corrections afterwards, claiming that they understood when the words were spoken that Mr. Sullivan intended them, and by those words to make a will, that when he said, was the real will. The value of this testimony is certainly impaired by these circumstances.

It is my opinion that the evidence is not sufficient to prove that the words constituting the alleged nuncupative will were in
240 fact ever spoken by John Sullivan, and even if they were spoken, and intended by Sullivan to have the effect of conveying his entire estate to Marie Carrau, still, by reason of failure to comply with the requirements of the statute, by offering proof to sustain it, within the time limited for that purpose, and in the manner prescribed, the court cannot lawfully give effect to it as a valid will. This is what the law prescribed with reference to the proof of a nuncupative will:

"No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper." (Sec. 4608, Ball. Code.)

In order to fairly interpret this statute and understand what it requires, it is proper to consider that in the English system, from which our practice has been derived, there were two methods of proving wills. The "common form," was an *ex parte* proceeding, by which the court upon presentation of a will, in the absence of the parties interested, received formal proof, and the will was immediately probated, but the record thereof was not even legal evidence to affect the title to real estate, and a will probated in that manner remained subject to be proved again, in an adversary proceeding, if any interested party demanded it within thirty years. The other method, called "the solemn form," required the issuance and service of a citation calling upon the parties whose rights may be affected to appear and
241 contest the will, and the proceeding included the examination of witnesses to sustain the will, and the introduction of other evidence by the respective parties in the same manner as in other adversary proceedings. (16 Enc. Pl. & Pr. 993–4; Richardson *v.* Green, *supra.*) The statutes of the Territory and State of Washington adopt the "common form" of proceeding, for probating an ordinary will. The effect of admitting a will to probate in that manner being merely to make it a public record, challenging the attention of interested parties for a period of one year, when it becomes absolutely binding upon all parties if no proceedings to contest its validity have been taken in the manner prescribed. (2 Ball. Code, secs. 6100, 6112.) But the legislature, for obvious and sufficient reasons, adopted the other method for establishing a nuncupative will, as shown by the section above quoted. As the words indicate, the law is mandatory and prescribed that proof to establish such a will shall not be received unless offered within six months after the time of uttering the words constituting such a will, and that a citation must be issued to the widow or next of kin of the deceased, that they may contest the will if they deem it proper to do so. The citation must, in reason, contain a notice of a time and place for the persons to whom it is addressed to appear, and it must be served or knowledge of its contents must be communicated, in time to afford a reasonable opportunity to exercise the right which the law intended to guard. A citation designating a time already past before it was issued is but a mockery of that fair and orderly method
242 of procedure which the law intended to prescribe, and it must be regarded as no citation. Without a lawful citation being issued and served, the superior court had no jurisdiction to hear proof in support of the alleged nuncupative will. The record shows that the superior court, instead of observing the plain and reasonable requirements of this law, made an order for a citation to issue immediately upon receiving the petition of Marie Carrau to admit the alleged will to probate, and under that order a formal citation was immediately issued, fixing the time for the widow or next of kin to appear for the purpose of contesting the alleged will, on the same day on which the petition was presented, and at an hour of the day then already past. This paper was then immedi-

ately placed in the hands of the sheriff, and was immediately returned to the court, with his endorsement thereon that he was not able to find any widow or next of kin of the deceased, John Sullivan, within King county, and the court thereupon proceeded to hear the testimony of the witnesses, signed a certificate authenticating a typewritten transcript of the testimony, prepared beforehand, and entered a decree accepting the will for record as the genuine last will and testament of John Sullivan, deceased. For its failure to issue a lawful citation, the superior court acted without jurisdiction in hearing proof of this alleged will, and the case stands exactly as if no proof had been offered within the time limited, and the decree of the court probating the will was and is an absolute nullity.

243 The complainants may take a decree in accordance with this opinion.

C. H. HANFORD, *Judge*.

[Duly filed July 8, 1902.]

[Title of Court and Cause.]

Decree.

This cause came on to be heard at the last term of this court, upon the pleadings and evidence, was argued by counsel and taken under consideration by the court, and thereupon, on consideration thereof, it is by the court ordered, adjudged and decreed as follows, to wit:

1. That John Sullivan, aged about sixty (60) years, late of the city of Seattle, King county, State of Washington, died in said city on the 26th day of September, 1900, intestate, the owner of personal property and real estate situated in said county, including the property known as the Sullivan building, and leaving no issue, nor any descendant, nor wife, nor father, nor mother, no sister nor brother, no uncle nor aunt, no granduncle nor grandaunt, no ancestor lineal or collateral, nor any person of nearer kin than first cousin, and never having married, but leaving surviving him the complainant Hannah O'Callaghan, otherwise known as Johanna Callaghan, of Cork, Ireland, his first cousin and one of his next of kin, a lawful child of his mother's deceased sister, Bridget Callaghan, and also leaving surviving him his first cousin and one of his next of

244 kin in equal degree with said Johanna Callaghan, the other complainant, Edward Corcoran, otherwise known as Ned Corcoran, of Dublin, Ireland, a lawful child of Margaret Corcoran, a deceased sister of the mother of said John Sullivan.

2. It is further ordered, adjudged and decreed that on November 19, 1900, the defendant Terrence O'Brien, a citizen of the United States and of the State of Washington was, by the superior court of the State of Washington for King county, in the matter of the estate of John Sullivan, deceased, numbered in said court 3664, duly appointed as administrator of the estate of said John Sullivan, deceased,

and ever since his said appointment he has been and now is the duly qualified and acting administrator of said estate.

3. It is further ordered, adjudged and decreed that the alleged nuncupative will claimed by the defendant Marie Carrau, a citizen of the United States and of the State of Washington, to have been made by the said John Sullivan on the 25th day of September, 1900, at about eleven o'clock p. m. in the following words, to wit: "I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick and we know not what might happen," was never made by said John Sullivan, nor did the said John Sullivan speak said words, or any of them, or any words of such import, nor did he make any will whatever.

4. It is further ordered, adjudged and decreed that the
245 superior court of the State of Washington for King county, never acquired jurisdiction to probate said alleged nuncupative will. Said court never made any lawful order for the issuance of a citation, nor was any lawful citation ever issued, nor was any notice of any proceeding to probate said alleged will ever given to or had by any one, nor did said court ever acquire jurisdiction to hear any evidence for the probate of said alleged will, but said court acted wholly without jurisdiction in the matter of the probate of said alleged will, and the certificate of probate of said alleged will granted by said court on the 8th day of March, 1901, and the decree of said court purporting to have been rendered and entered on said 8th day of March, 1901, admitting said alleged will to probate as the last will and testament of said John Sullivan, deceased, were made and rendered wholly without jurisdiction, and said proceedings and all proceedings in the matter in said superior court numbered 3664, entitled "In the matter of the estate of John Sullivan, deceased," insofar as they relate to the alleged probate of said alleged nuncupative will, are null and void and of no force and effect.

5. It is further ordered, adjudged and decreed that the complainants Johanna Callaghan and Edward Corcoran were at the time of the commencement of this action and now are aliens, subjects of the King of Great Britain and Ireland, and first cousins and next of kin of said John Sullivan, deceased, and are entitled to share equally in
246 the assets of the estate of said John Sullivan, deceased, as his first cousins and next of kin, and the share of each of said complainants in said estate exceeds and at the time of the commencement of this suit exceeded the sum and value of two thousand dollars ($2,000) exclusive of interest and costs, and the value of said estate has at all times exceeded and now exceeds the sum of three hundred thousand dollars ($300,000), exclusive of interest and costs, and the defendant, Terrence O'Brien, as administrator of the estate of said John Sullivan, deceased, is directed to recognize the right of each of said complainants to share in said

estate as a first cousin of said deceased and as one of the next of kin of said deceased, John Sullivan.

6. It is further ordered, adjudged and decreed that the defendant, Marie Carrau, and all persons claiming under her or representing her in any manner whatever, are hereby perpetually restrained and enjoined from setting up or asserting in any manner whatsoever any claim, right or title to or interest in the estate of said John Sullivan, deceased, or in any part thereof, under said alleged nuncupative will and under the alleged probate thereof, or under either thereof, and from setting up, asserting or in any manner whatsoever making any claim whatsoever under said alleged nuncupative will and the alleged probate thereof, or either thereof, in any court or elsewhere except in a court having appellate jurisdiction to review this decree.

7. It is further ordered, adjudged and decreed that the complainants recover from the defendant, Marie Carrau, their costs and disbursements in this suit sustained, the same to be taxed by the clerk of this court.

247 Dated July 21st, 1902.

C. H. HANFORD,
Judge of the District Court of the United States,
Presiding in the Circuit Court of the United States.

[Duly filed July 21, 1902.]

UNITED STATES OF AMERICA, }
District of Washington, } *ss:*

I hereby certify and return that I served the annexed decree and order of the court on the therein named Marie Carrau, by handing to and leaving a true and correct copy thereof with Mrs. A. Daussat, a person of suitable age and discretion personally, residing at No. 1417 Seventh Ave., Seattle, in said district, it being the usual place of abode of Marie Carrau, on the twenty-second day of July, A. D. 1902.

C. B. HOPKINS,
United States Marshal,
By H. W. TYLER, *Deputy.*

Marshal's Fees.

Service	$2.00
Mileage	.12
Total	$2.12

UNITED STATES OF AMERICA,
District of Washington, } ss:

I hereby certify and return that I served the annexed decree and order of the court, on the therein named Terrence
248 O'Brien, as administrator of the estate of John Sullivan, deceased, by handing to and leaving a true and correct copy thereof with said Terrence O'Brien, personally, at his office in Seattle in said district on the 22d day of July, A. D. 1902.

C. B. HOPKINS,
United States Marshal,
By H. W. TYLER, *Deputy.*

Marshal's Fees.

Service	$2.00
Mileage	.06
Total	$2.06

[Title of Court and Cause.]

Notice of Application for Additional Security.

To the complainants and their attorneys, Messrs. Farrell, Piles, Donworth & Howe:

Take notice: That upon the motion and affidavit of Marie Carrau, verified the 30th day of August, 1902, a copy of which is hereunto annexed, the undersigned will apply to this court on the 4th day of September, 1902, at 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, for an order that the complainants furnish additional security for costs that have been and that yet will be incurred in this action, and as provided by the rules of this court; and that you serve a written notice of the filing of an undertaking and security for costs herein demanded by the attorneys for
249 the defendant; and that all other proceedings on the part of the complainants be staid until the giving and filing of such undertaking and for such further relief as may be just.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Defendant Marie Carrau.

[Title of Court and Cause.]

Application to Increase Cost Bond.

Comes now the defendant, Marie Carrau, and moves this honorable court for additional security in the above-entitled cause.

Said motion is based upon the affidavit of the defendant, Marie Carrau, and records and files in this cause.

W. F. HAYS,
J. P. HOUSER, AND
J. W. ROBINSON,
Solicitors for Defendant Marie Carrau.

[Title of Court and Cause.]

Affidavit of Marie Carrau.

STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn, on oath deposes and says:

That she is the defendant in the above-entitled action, and
250 that heretofore, to wit, on or about the 22d day of October, 1901, the defendant obtained an order of this honorable court requiring the complainants herein to file security for costs, they being non-residents of the State of Washington, as required by the rules of this court, which security was fixed by this honorable court at the sum of $400.00, and which was duly given; that since the giving of said security the costs already incurred in the trial of said case have so increased in amount that the bond is inadequate to meet the expenses and costs which will be incurred by this defendant in the event she shall be successful in maintaining her defense to this action.

Affiant says that there has already been incurred in this proceeding, which are allowable under the rules of this court, which she is informed and verily believes, costs to the extent of the sum of over one thousand dollars ($1,000.00); that there is yet to be incurred and will be incurred in this case in the prosecution of her appeal from the order and decree entered by this honorable court on the 21st day of July, 1902, to the circuit court of appeals for this circuit, a transcript of the entire record in said cause, together with the printing thereof, consisting of a record approximately of 1500 pages of printed matter, which, under the rules of the circuit court, will cost, as affiant is informed and believes, the sum of $1.25 per page; and that the probable expense to be incurred and which will be incurred by this defendant in the prosecution of her said appeal and in her

251 further defense to this action the further sum of at least $2,500.00; that said sum will be necessarily incurred in excess of the sum of money already expended and for which this defendant is liable, making in all a cost of from $3,500.00 to $4,000.00, in the event this defendant shall be successful in maintaining her said appeal and in reversing the decree, for which amount she will be entitled to obtain judgment against said complainants, as she is informed and verily believes.

Affiant says that the present bond, given as said non-resident complainants, is inadequate to secure this defendant, and that a bond increased to the sum of $5,000.00 would not be excessive, but would be reasonable and fair, in the premises; that no previous application for an order requiring complainants to file additional security has been made in this action.

MARIE CARRAU.

Subscribed and sworn to before me this 30th day of August, 1902.

[NOTARIAL SEAL.] NELSON MacPHERSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of the within application and notice received this 1st day of September, 1902.

PILES, DONWORTH & HOWE,
Attorneys for Complainants.

[Duly filed September 2, 1902.]

252 [Title of Court and Cause.]

Exceptions to Entry of Decree, etc.

Now, on this July 21st, 1902, the solicitors for Marie Carrau, appearing in open court at the time of the presentation of the decree in favor of the complainants herein for signature, except and object to said decree and the wording thereof, and *does* to that portion of the proposed decree granting a perpetual injunction against said Marie Carrau, respondent, and her agents and representatives, from in any manner claiming or protecting her rights, if any she have, under the nuncupative will mentioned in said decree, and particularly as to the pending of matters affecting her rights in the State court, to-wit: the superior court of the State of Washington for King county, and after oral argument the exceptions are allowed.

And the solicitors for Marie Carrau also apply to the court for an order fixing a supersedeas bond herein for the purposes of appeal, and the court being advised,

It is hereby ordered that in the event the solicitors for the respondent, Marie Carrau, shall decide to appeal this cause of action

to the United States circuit court of appeals, the supersedeas bond is hereby fixed at two thousand ($2,000) dollars, and in the event that the appeal is taken from this court to the Supreme Court of the United States, the supersedeas bond is hereby fixed at three thousand ($3,000) dollars.

And it is further ordered that a stay is hereby granted to
253 said respondent for a period of sixty (60) days from this date in which to determine to which court an appeal will be taken, if any, and the filing of a bond and the perfecting of said appeal.

C. H. HANFORD, *Judge.*

Now, on September 5th, 1902, it having been made to appear to the court that the foregoing order and no order with reference to this matter had been entered herein, the foregoing order is hereby made *nunc pro tunc* as of July 21st, 1902, and the clerk of this court is hereby directed to enter the same as of that date.

C. H. HANFORD, *Judge.*

[Duly filed September 5, 1902.]

[Title of Court and Cause.]

Petition for Appeal and Order Allowing Same.

The above-named respondents and appellants, *and* Marie Carrau, conceiving herself aggrieved by the decree of the foregoing court entered herein on July 21st, 1902, in the above entitled action, and the various rulings and orders in said action made adverse to her in the above-entitled cause hereby appeals from the said decree and the various orders and rulings made in this action adverse to her, to the United States circuit court of appeals of the ninth circuit, and hereby prays that this, her appeal, may be allowed, and that a transcript of the record and proceedings, files and papers,
254 depositions, evidence and exhibits upon which said decree, orders, rulings, etc., herein made, properly authenticated, may be sent to the United States circuit court of appeals of the ninth circuit.

J. P. HOUSER AND
J. W. ROBINSON,
Solicitors for Respondent and Appellant.

And now, on this September 19th, 1902, it is ordered that said appeal be allowed as prayed for hereinabove, and the appeal bond for costs is herein and hereby fixed at the sum of two hundred fifty ($250.00) dollars.

Dated at Seattle, Washington, September 19th, 1902.

C. H. HANFORD, *Judge.*

[Endorsed:] Petition for appeal and order allowing same. Filed in the United States circuit court, district of Washington, September 20, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Assignment of Errors.

Now, on this September 17, 1902, the above-named respondent and appellant, Marie Carrau, by her solicitors, hereby and herewith for her assignment of errors in this action for the purposes of appeal, says: That in the records, files and proceeding- in the above-entitled action, upon the hearing and determination thereof in the above-entitled court, and in the judgment and decree rendered
255 therein by said court in said cause under date of July 21, 1902, and on the various dates upon which rulings and orders were made therein as appears from the record and files in this action, there are manifest errors in this, to wit:

I.

In overruling and denying the motion of the respondent and appellant to abate this action, filed therein August 6, 1901, and in not sustaining said motion to abate the action.

II.

In overruling and denying the objections as to the jurisdiction of this court in this action, filed therein August 27th, 1902, and in not granting and sustaining said objections and exceptions.

III.

In overruling and in not sustaining the plea in abatement, filed therein September 3d, 1901.

IV.

In overruling and in not sustaining the demurrer to the bill on the ground that said bill of complaint does not state facts sufficient to entitle the complainants to any relief, and because said bill shows upon its face that the court had no jurisdiction of the subject matter of the action.

V.

That the court erred in granting the motion to take from the files the objections to the jurisdiction of the court, and for a bond for costs, on August 27th, 1901, and in not granting each of said motions.

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VI.

The court erred in overruling and not sustaining the objections to the jurisdiction of the court, and in denying and in not granting the demand of the respondent and appellant for a jury in the event that the court retained jurisdiction of the action, filed February 15th, 1902.

VII.

The court erred in denying the application for a commission to take testimony in Ireland, filed herein May 19th, 1902.

VIII.

The court erred in overruling the objections and exceptions to the jurisdiction of the court, made and entered February 17th, 1902.

IX.

The court erred in denying and in not granting the application termed a "renewal application" for a commission to take testimony in Ireland.

X.

The court erred in denying respondent's and appellant's application for a continuance of the trial of the action upon its merits upon April 4th, 1902, and in not granting such continuance.

XI.

The court erred in denying respondent's and appellant's motion to dismiss the action upon the complainant's resting at the
257 close of the introduction of their evidence, and in not sustaining the demurrer to the sufficiency of the proofs and dismissing said action for failure of proofs to sustain the allegations of the bill.

XII.

The court erred in rendering a decree in favor of the complainants herein, and not granting any relief whatever as prayed for in said bill of complaint, and in not rendering a decree in favor of the respondent and appellant, dismissing said action, and for costs.

Wherefore, the above-named respondent and appellant, Marie Carrau, prays that this, her assignment of errors, be filed and entered upon the records of this cause, and she further prays that upon the hearing of this appeal, all orders and rulings made herein adverse to this respondent and appellant, and the decree entered herein be in all things reversed, and that the bill of complaint and this cause of action be dismissed.

Dated at Seattle, Washington, September 17th, 1902.

MARIE CARRAU,
By J. P. HOUSER AND
J. W. ROBINSON,
Her Solicitors.

[Endorsed:] Assignment of errors. Filed in the United States circuit court, district of Washington, September 20, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

258 [Title of Court and Cause.]

Bond on Appeal.

Know all men by these presents, that we, Marie Carrau, as principal, and W. M. Russell, as surety, for the above-named respondent and appellant, Marie Carrau, are jointly and severally held and firmly bound unto Hannah Calligan and Edward Corcoran, the above-named complainants and appellees, in the penal sum of two hundred fifty ($250.00) dollars, to them to be paid, for the payment of which jointly and severally we bind ourselves, our successors and assigns, our heirs, executors, and administrators firmly by these presents.

The condition of the above obligation is such that:

Whereas, the above-named Marie Carrau has prosecuted an appeal to the United States circuit court of appeals for the ninth circuit, in the above-entitled cause:

Now, therefore, if the said Marie Carrau, respondent and appellant, shall prosecute her said appeal to effect, and answer all costs, then this obligation shall be void, otherwise to remain in full force and effect.

Dated at Seattle, September 17th, 1902.

MARIE CARRAU.
W. M. RUSSELL.

STATE OF WASHINGTON, } ss:
County of King, }

259 W. M. Russell, being duly sworn, on oath, each for himself and not one for the other, deposes and says: That he is a citizen of the city of Seattle, King county, Washington, above the age of twenty-one years; not a lawyer, clerk, sheriff or other officer of said court; that he is worth the sum of two hundred fifty ($250.00) dollars in property within the State of Washington, over and above all property exempt from sale by execution.

W. M. RUSSELL.

Subscribed in my presence and sworn to before me this 17th day of September, 1902.

[NOTARIAL SEAL.] JAS. B. TAYLOR,
Notary Public in and for the State of Washington,
Residing at Seattle.

The above bond accepted and approved by me this 19th day of September, 1902.

C. H. HANFORD, *Judge.*

[Endorsed:] Bond on appeal. Filed in the United States circuit court, district of Washington, September 20, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Bond on Appeal.

Know all men by these presents that we, Marie Carrau as principal, and W. M. Russell and S. F. Coombs, her sureties, all of Seattle, King county, Washington, are held and firmly bound unto the above-named Hannah Calligan and Edward Corcoran in the
260 sum of two thousand ($2,000.00) dollars for the payment of which well and truly to be made we bind ourselves and each of us and all our heirs, executors, administrators and assigns, jointly and severally by these presents.

The conditions of the above bond are that: Whereas, the above-named Marie Carrau, as appellant and respondent, is about to or has prosecuted her appeal from the above-entitled court to the circuit court of appeals of the United States from the district of Washington, northern division, to reverse the judgment and decree of the United States circuit court for the district of Washington, northern division, in the above-entitled case;

Now, therefore, the conditions of this obligation are such that if the above-named Marie Carrau shall prosecute her said appeal to effect, and answer all [damages and]* costs, [if she fail to make good her appeal]* then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Witness our hands this 17th day of September, 1902.

MARIE CARRAU.
W. M. RUSSELL.
S. F. COOMBS.

STATE OF WASHINGTON, } ss:
County of King, }

W. M. Russell and S. F. Coombs, of lawful age, being first duly sworn, upon oath, each for himself and not one for the other says: that he is a resident and freeholder of King county, Wash-
261 ington, and is the W. M. Russell and S. F. Coombs who signed the above bond as surety for Marie Carrau, and says that he is worth the sum of two thousand ($2,000.00) dollars in property within the State of Washington and county of King, over and above all debts and liabilities, exclusive of property exempt by law.

W. M. RUSSELL.
S. F. COOMBS.

Subscribed in my presence and sworn to before me this 17th day of September, 1902.

[NOTARIAL SEAL.] WM. HICKMAN MOORE,
Notary Public in and for the State of Washington,
Residing at Seattle.

[* Words enclosed in brackets erased in copy.]

The above bond accepted and approved by me this 19th day of September, 1902.

C. H. HANFORD,
Judge of the District Court of the United States, Presiding in the Circuit Court of the United States.

[Endorsed:] Supersedeas bond. Filed in the United States circuit court, district of Washington, September 20, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Motion for Permission to Substitute New Supersedeas Bond.

Come now the solicitors for Marie Carrau, one of the respondents herein, on appeal to the circuit court of appeals, and moves
262 the court for an order substituting the hereto attached supersedeas bond on appeal, for the supersedeas bond accepted and approved by the Honorable C. H. Hanford, judge of said court, on September 19th, 1902, and of record in this action, for the reason that said bond so as aforesaid accepted and approved, was interlined, and because it appears upon an examination of said bond that certain words and phrases in the conditions of the obligation had been apparently crossed out with a pen, and because said bond is not clean and free from interlineations.

This motion is based upon the affidavit hereto attached and upon the records and files herein.

J. P. HOUSER AND
J. W. ROBINSON,
Solicitors for Marie Carrau.

STATE OF WASHINGTON, }
County of Thurston, } *ss.:*

J. W. Robinson, being sworn, says that he is one of the solicitors for Marie Carrau, in this action. That at the time the supersedeas bond on appeal herein was presented to the judge of this honorable court, the interlineations contained therein were not noticed by affiant, the bond having been prepared and executed by other parties, and affiant's attention was not called to the fact that said supersedeas bond so as aforesaid presented was not a clean paper. That such bond was accepted and approved on September 19th, 1902, and is of record herein, to which reference is hereby made. That affiant presents herewith a duly executed supersedeas bond signed
263 and executed by the same individuals, and which is the same bond in form and substance, with said interlineations omitted therefrom, and further affiant saith not.

J. W. ROBINSON.

Subscribed and sworn to before me this September 24, 1902.

[NOTARIAL SEAL.] BYRON MILLETT,
Notary Public in and for the State of Washington,
Residing at Olympia.

[Endorsed:] Motion and affidavit. Filed in the United States circuit court, district of Washington, September 25, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Citation (Copy).

United States of America to Hannah Calligan and Edward Corcoran, complainants and appellees, Greeting:

You are hereby cited and admonished to be and appear at a term of the circuit court of appeals for the ninth circuit, to be holden at San Francisco, California, to wit, on the 13th day of October, 1902, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein Hannah Calligan and Edward Corcoran are appellees, and Marie Carrau is appellant, to show cause, if any there
264 be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the party on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 19th day of September, 1902.

[Seal U. S. Circuit Court, Dist. of Washington.]

C. H. HANFORD, *Judge.*

Received copy of within, but reserve all rights to object to the jurisdiction of the court on appeal.
Oct. 9, 1902.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors for Complainants.

[Endorsed:] Citation. Filed in the United States circuit court, district of Washington, October 9, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Order Extending Time to Prepare Record on Appeal.

Now, on this October 9th, 1902, it appearing to the court that the record of this action on appeal to the United States circuit court of

appeals cannot be prepared and certified within the time required by the citation, to wit, October 13th, 1902, and it appearing to the court that this appeal cannot be heard before the February,
265 1903, term; and, upon application of J. W. Robinson, one of the solicitors for the appellant, and the court being advised, it is now ordered that the time be extended until the 30th day of December, 1902, in which to prepare and certify said record.

Dated October 9th, 1902.

C. H. HANFORD, *Judge.*

Filed in the United States circuit court, district of Washington, October 10, 1902.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

[Title of Court and Cause.]

Order Granting Permission to Substitute New Bond.

Now on this October 27th, 1902, the application of the solicitors for the respondents and appellants for leave to correct the record herein by filing a clean supersedeas bond in lieu of the supersedeas bond heretofore approved herein on September 19, 1902, coming on to be heard, and it appearing to the court that certain words contained in the supersedeas bond approved in this case appear to have had a pen run through them, so that such bond is not a clean bond as required, but that it was not intentional on the part of those who prepared and submitted said bond to strike out or erase such words, and after argument of J. W. Robinson, one of the solicitors for the respondents and appellants, and J. B. Howe, one of the solic-
266 itors for the complainants and appellees, and the court being advised, such application is granted, and it is hereby ordered that the bond presented with said application, which is signed by Marie Carrau, as principal, and W. M. Russell and S. F. Coombs, as sureties, being the same individuals who executed the former bond, and the bond here presented being the same bond in substance and form, said application is granted, and said clean bond is hereby substituted for the supersedeas bond heretofore approved herein, and said bond is hereby accepted and approved by the court this October 27th, 1902.

C. H. HANFORD,
Judge of the District Court of the United States, Presiding in the Circuit Court of the United States.

Filed in the United States circuit court, district of Washington, October 27, 1902.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

[Title of Court and Cause.]

Supersedeas Bond.

Know all men by these presents, that we, Marie Carrau, as principal, and W. M. Russell, and S. F. Coombs, as sureties, all of Seattle, King county, Washington, are held and firmly bound unto the above-named Hannah Calligan and Edward Corcoran in the sum of two thousand ($2,000.00) dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, and all our heirs, executors, administrators and assigns, jointly and severally by these presents.

267 The conditions of the above bond are that:

Whereas, the above-named Marie Carrau, respondent and appellant, is about to prosecute an appeal from the above-entitled court to the circuit court of appeals of the United States for the ninth *district* to reverse the judgment and decree of the United States circuit court for the district of Washington, northern division, in the above-entitled case:

Now, therefore, the conditions of this obligation are such that if the above-named Marie Carrau shall prosecute her said appeal to effect, and answer all damages and costs if she fail to make good her appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Witness our hands this 17th day of September, 1902.

MARIE CARRAU.
W. M. RUSSELL.
S. F. COOMBS.

STATE OF WASHINGTON, }
County of King, } *ss:*

W. M. Russell and S. F. Coombs of lawful age, being first duly sworn, upon oath, each for himself and not one for the other says: That he is a resident and freeholder of King county, Washington, and is the W. M. Russell and S. F. Coombs who signed the above bond as surety for Marie Carrau, and says that he is worth the sum of two thousand ($2,000.00) dollars, in property within the State of Washington, county of King, over and above all debts, and

268 liabilities, exclusive of property exempt by law.

W. M. RUSSELL.
S. F. COOMBS.

Subscribed in my presence and sworn to before me this 23d day of September, 1902.

[NOTARIAL SEAL.] WM. HICKMAN MOORE,
Notary Public in and for the State of Washington,
Residing at Seattle.

The above bond accepted and approved by me this 27th day of October, 1902, as a substitute for original supersedeas bond which was indorsed by me as approved on the 19th day of September, 1902.

C. H. HANFORD,
Judge of the District Court of the United States, Presiding in the Circuit Court of the United States.

[Endorsed:] Supersedeas bond. Filed in the United States circuit court, district of Washington, October 27, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Order to Transmit Certain Original Exhibits.

Now, on this day, it appearing to the court from the statements of J. W. Robinson, Esq., of counsel for Marie Carrau above named, that of the exhibits introduced in evidence and used upon the hearing of this cause, Exhibits Y 36, Y 37, Y 38, and Y 39 in-
269 troduced on behalf of the complainants are photographs, and impracticable to be copied by the clerk of the above-entitled court and included in the record on appeal herein, it is—

Ordered that said original exhibits above named be transmitted by the clerk of this court to the United States circuit court of appeals for the ninth circuit, together with the record on appeal herein and to be considered by said appellate court therewith.

Dated Dec. 11, 1902.

C. H. HANFORD,
Judge United States District Court, Presiding in the United States Circuit Court.

[Endorsed:] Order to send up certain original exhibits. Filed in the United States circuit court, district of Washington, December 11, 1902. A. Reeves Ayers, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA, *District of Washington,* } *ss:*

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify the foregoing two hundred and forty-five (245) typewritten pages, numbered from 1 to 245, inclusive, to be full, true and correct copies of all the papers, records and proceedings in the above and therein entitled
270 cause, now on file and of record in my office at Seattle in the northern division of the district of Washington, save and ex-

cepting the depositions and proofs taken and used in said cause, which said depositions and proofs are contained in volumes II and III of this record on appeal, transmitted herewith; and I further certify that the foregoing pages, together with said depositions and proofs referred to, constitute the record on appeal in the above-entitled cause from the above named court to the United States circuit court of appeals for the ninth circuit, on the appeal of Marie Carrau, respondent above named and appellant in said appellate court.

I further certify that the cost of preparing and certifying the record on appeal in this cause is the sum of $404.30, and that the said sum has been paid to me by Marie Carrau, respondent above named, and appellant.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, this 11th day of December, 1902.

[SEAL.] A. REEVES AYRES, *Clerk*,
By R. M. HOPKINS,
Deputy Clerk.

271 [Title of Court and Cause.]

Citation (Original).

United States of America to Hannah Calligan and Edward Corcoran, complainants and appellees, Greeting:

You are hereby cited and admonished to be and appear at a term of the circuit court of appeals for the ninth circuit, to be holden at San Francisco, California, to wit, on the 13th day of October, 1902, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the district of Washington, northern division, wherein Hannah Calligan and Edward Corcoran are appellees, and Marie Carrau is appellant, to show cause, if any there be, why the decree in said appeal mentioned should not be corrected and speedy justice should not be done to the party on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 19th day of September, 1902.

[SEAL.] C. H. HANFORD, *Judge.*

Received copy of within, but reserve all rights to object to the jurisdiction of the court on appeal.
Oct. 9, 1902.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors for Complainants.

272 [Endorsed:] No. 943. In the circuit court of the United States, for the district of Washington, northern division. Hannah Calligan and Edward Corcoran, complainants and appellees, *vs.*

Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, respondents and appellants. Citation. In equity. Filed in the United States circuit court, district of Washington. October 9, 1902. A. Reeves Ayres, clerk. H. M. Walthew, deputy.

[Title of Court and Cause.]

Master's Report.

UNITED STATES OF AMERICA,
District and State of Washington, Ninth Judicial Circuit, County of King, } ss:

I, Eben Smith, United States master in chancery and United States examiner and special commissioner appointed in this cause, do hereby certify that on the 18th day of January, 1902, appeared before me at my office, room 715 New York block, in the city of Seattle, King county, Washington, James B. Howe, Esq. (of Piles, Donworth & Howe), solicitor for complainants in the above-entitled cause, and W. F. Hays, Esq., solicitor for Marie Carrau, defendant in said cause, and thereupon the proceedings as appear in the first part of said record hereinbefore and throughout said record
273 were instituted and Wm. Cochran, Wm. Corcoran, Scott Calhoun, R. H. Denny, E. P. Erwin, C. H. Farrell, Boyd J. Tallman, Terrence O'Brien, John Cunningham, I. D. McCutcheon and Rev. F. X. Prefontaine, witnesses were produced for and on behalf of said complainants, and said witnesses were by me first carefully cautioned and duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above-entitled cause, and thereupon testified as follows:

[Title of Court and Cause.]

Testimony.

Be it remembered that on this 18th day of January, A. D. 1902, at 10 o'clock in the forenoon, pursuant to notice duly served for the taking of testimony on behalf of the complainants before me, the undersigned United States master in chancery of said court, on the day above mentioned, and at the said hour, witnesses to be produced by and on behalf of the above-named complainants, appeared before me James B. Howe, Esq., one of the solicitors for said complainants, and W. F. Hays, Esq., solicitor for Marie Carrou, and upon the application of Mr. Hays the taking of said testimony was continued until 1:30 o'clock p. m. this day.

And at the hour above named, to wit, 1:30 o'clock in the afternoon of January 18th, 1902, the respective parties appeared before

me as at the morning session. Thereupon the following proceedings were had and testimony offered:

274 Mr. HAYS: I wish the court would allow the record to show at this time, on the part of the respondents, that W. F. Hays appears specially and protests against the hearing of any testimony or evidence in this cause, for the reason that the court is without jurisdiction of either the parties or of the subject matter. The court having practically ruled upon that question—the trial court, I mean—I assume the master will have nothing to do with the question further than merely to allow the record to show our objections being continued at this time to the jurisdiction.

I further at this time demand of the complainants the production and return to the respondent of all of the letters and correspondence between the decedent, John Sullivan and Eugene F. Collins, solicitor, of Dublin, Ireland, and Mrs. Lyons. This demand is founded upon an alleged agreement entered into between Messrs. Howe and Wright, who, I understand is of counsel for complainants, by the terms of which agreement these letters upon the completion of taking testimony in Ireland were to have been restored to the said Eugene Collins; and, until said letters are returned to us—to me, on behalf of the respondent and the said Collins, who was a solicitor employed by the respondent to appear in the taking of testimony in this case; that these letters be here and now produced.

Mr. HOWE: Counsel for complainants would ask Mr. Hays to produce any authority that he has, if he has any, authorizing him to make such a demand.

275 Mr. HAYS: I will say I have a written authority from Mr. Collins to make this demand, and an urgent request to do so, before permitting the taking of any testimony in this case. I have just returned from the courtroom and I have none of my papers in my immediate possession, but if counsel will give me time to go to my office, I will produce the authority.

(By agreement, proceedings suspended and Mr. Hays excused for purpose of procuring paper mentioned. Upon his return proceedings were resumed as follows:)

Mr. HAYS: Now, this is a letter bearing date "Dublin, 23d December, 1901," upon the letter head of "Eugene F. Collins. Solicitor and commissioner for taking affidavits. Temple chambers Eustis street." Addressed "W. F. Hays, Esq., solicitor, Seattle, U. S. A. *Re* John Sullivan, deceased——"

Mr. HOWE: Do you propose to read a part of that?

Mr. HAYS: Yes sir.

Mr. HOWE: I interpose an objection. I object to the introduction of only a portion of the letter produced by Mr. Hays. I do not object to the entire letter being read, or to the letter being filed with the examiner. I request that the letter be filed with the examiner.

Mr. HAYS: I will read these parts: "I may mention to you that

Mr. Wright holds in his possession now all the original letters from the deceased to Mrs. Lyons and from the deceased to me. These were obtained, or rather stolen from me, and I have sent a full statement of the facts to the judge who will hear the case, and I
276 trust that on my behalf you will attend on the hearing and object to the evidence taken on the commission being heard until these documents are in your possession. The proper course I should have adopted here would have been to swear an information against Wright and had him put in jail for larceny; but seeing the class of gentleman he was and having regard to my own position here, I did not like to be mixed up with a person whose conduct was so criminal as his."

The other portion of the letter relates to other matters in connection with the case, and is signed "Yours faithfully, Eugene F. Collins."

Mr. HOWE: I would like to ask Mr. Hays if Mr. Collins in that letter says anything about having charged £20 for furnishing the letters?

Mr. HAYS: He states, not in this letter, but in another form, that these letters were sought by Mr. Howe and Mr. Wright. That he declined to show the letters to either of the gentlemen without consideration. They offered $25 for the use of the letters at the hearing, the same to be returned to Mr. Collins at its conclusion. But at the conclusion of the taking of testimony there in Queenstown or wherever it was taken, and that after some little controversy, lasting over a few days, he allowed the said gentleman the use of the letters for that examination, to be returned to him immediately upon the examination and the close of the taking of testimony in that place, for the consideration—I do not remember, but for some financial consideration; it being his statement and belief that the letters
277 were the private property of himself, that he could not dispose of, and would not part with, permanently.

Mr. HOWE: Counsel for complainants demands from Mr. Hays the production of the letters referred to.

Mr. WILLIAM COCHRANE, a witness called on behalf of the complainants, being duly sworn, duly cautioned and sworn, testified as follows:

(Mr. HOWE:)

Q. Mr. Cochrane, what is your full name?
A. William Cochrane.
Q. Where do you reside?
A. King county.
Q. How long have you resided here?
A. Since eighteen hundred and seventy-three—the fifth of April, eighteen hundred and seventy-three.
Q. Have you ever held any official position in King county, and if so, what?

A. I was sheriff of the county.

Q. For how long?

A. Two years.

Q. Did you ever know John Sullivan, the owner of the Sullivan building?

A. Yes, sir, I knew Mr. Sullivan.

Q. How long did you know him?

A. Mr. Sullivan—I have known him since eighteen hundred and seventy-four; that was really when I first got acquainted with him.

Q. What business was he engaged in?

A. He had a tobacco, pipes and toys and wheelbarrows and such like of that, store.

Q. Where was his store?

278 A. Right across from—it was right across from the Dexter-Horton bank, but up a door or two from the corner saloon there on Commercial street.

Q. Did you at the time that you first met Mr. Sullivan, did you have any dealings with the firm of Crawford & Harrington?

A. Yes, sir, I was dealing with Crawford & Harrington.

Q. Was it through them that you became acquainted with John Sullivan?

A. Crawford & Harrington furnished me; I was logging out at Lake Washington and I came in to get a bill of goods and they were out of tobacco and I had to have tobacco for the men working in the camp. They did not have any tobacco and Mr. Harrington took me across to Mr. Sullivan and he introduced me to Mr. Sullivan and he says, "I have noticed Mr. Cochrane," he said, "for the last year or so," and he asked me what side of Ireland I came from.

Q. Mr. Sullivan asked you that?

A. Yes, sir. I told him that I came from the County Cavin, the upper part of the County Cavin. He says how far is that off the city of Dublin. I told him that it was forty-two miles. I had a cousin, I have a cousin in the city of Dublin and I did not know but that you might know him and be in some way connected. I said that I also had cousins in the city of Dublin and I says, "How do you spell your name," or how does he spell his name.

279 "Well," he says, "C-o-r-c-o-r-a-n"; I says, "Sullivan, that is not the same name."

Q. That is not the same name as what?

A. It is not the same name as mine. He asked me how I spelt my name and I said since I ever knew it or heard of it, it was spelt, "C-o-c-h-r-a-n-e," and that is the way I spell my name. Well, then he asked me, I think, further what church I belonged to, and I told him that my father was a Presbyterian and that my mother was an Episcopalian, and that I was brought up in an Episcopalian church. Mr. Sullivan stopped.

Q. Now, Mr. Cochrane that was the occasion of your first meeting Mr. Sullivan, was it?

A. That is the first time, Mr. Harrington. I think I had seen the man several times but I never had an introduction.

Q. Was that the reason of your having it impressed upon your memory, the discussion of these matters?

A. Yes, sir.

Mr. HOWE: That is all.

Mr. HAYS: We have no question.

(The witness and counsel waive the signature *of* the testimony of the witness.)

ROLLIN H. DENNY, a witness called on behalf of the complainants, being duly sworn and cautioned, testified as follows:

(Mr. HOWE:)

Q. Mr. Denny where do you reside?

A. Seattle.

280 Q. How long have you resided here?

A. Since eighteen hundred and fifty-one.

Q. What has been your business?

A. Most of the time banking business.

Q. In what bank?

A. Dexter-Horton & Co.

Q. What position, if any, do you hold in that bank?

A. Paying teller.

Q. For how many years?

A. Well, practically for twenty-six years.

Q. During that time was Mr. Sullivan, John Sullivan, the owner of the Sullivan building in this city, a depositor in that bank?

A. Yes, sir.

Q. Did he draw checks on the bank?

A. Yes, sir.

Q. Did you pay checks drawn by him upon the bank?

A. Yes, sir, I did.

Q. Do you know his handwriting?

A. Well, I think so.

Q. I hand you a letter dated April 29, 1879, addressed to Thomas S. Lyons, Esq., and ask you if that letter and the envelope accompanying it is the handwriting of John Sullivan?

A. That looks like his signature.

Q. Well, from your knowledge of his handwriting, in your opinion, is that his signature?

A. Yes, sir.

Q. I ask you to look on the back of the same envelope and say whether the signature, "John Sullivan" on the back of the envelope is his?

A. I would think so, yes, sir.

281 Mr. HOWE: Complainant- now offers in evidence the letter testified to by the witness and asks that it be marked Plaintiffs' Exhibit "Y," together with the envelope.

Mr. HAYS: Respondent- objects to the introduction of the letter, for the reason that it is incompetent, irrelevant, and immaterial under the issues, and not the property of the complainant-.

(Letter and envelope marked, Complainants' Exhibit- "Y" and "Y 1," respectively, filed by the examiner and returned herewith.)

Q. I now hand you, Mr. Denny, a letter, dated October 7th, eighteen hundred *and two*, purporting to have been signed by John Sullivan, and the envelope accompanying the same, and ask you if that letter is in the handwriting of John Sullivan?

A. I should say that it was.

Q. Is the envelope accompanying it?

A. Yes, that is the same.

Mr. HOWE: We now offer the letter in evidence and ask to have it marked complainants' exhibit, with the envelope.

Mr. HAYS: We object as incompetent, irrelevant and immaterial under the issues.

(Letter and envelope marked, respectively, Complainants' Exhibit- "Y 2" and "Y 3," filed and returned herewith.)

282 Q. I now hand you another, dated April 11, eighteen hundred and eighty-five, purporting to be signed by John Sullivan, and ask you whether the letter and the envelope accompanying the same, — in the handwriting of John Sullivan?

A. I should say that they were.

Mr. HOWE: We offer them in evidence.

Mr. HAYS: We renew our last objection.

(Letter and envelope marked, respectively, Complainants' Exhibit- "Y 4" and "Y 5," filed and returned herewith.)

Q. I now hand you another purporting to be signed by John Sullivan, dated July 15th, eighteen hundred and eighty-seven, and ask you whether that letter and the address on the envelope accompanying the same was the handwriting of John Sullivan?

A. I should say that they were.

Mr. HOWE: I now offer them in evidence and ask to have them marked plaintiffs' exhibits.

Mr. HAYS: I object as incompetent, irrelevant and immaterial under the issues.

(Papers received and marked, respectively, Complainants' Exhibit- "Y 6" and "Y 7," filed and returned herewith..

Q. I now hand you a letter dated August twentieth, eighteen hundred and ninety-two, purporting to be signed by John Sullivan, and ask you whether the letter and the address on the envelope accompanying the same is in the handwriting of John Sullivan.

283 A. I should say that they were.

Mr. HOWE: We offer them in evidence and ask to have them marked complainants' exhibits.

Mr. HAYS: I object as incompetent, irrelevant, and immaterial.

(Letter and envelope marked, respectively, Complainants' Exhibit "Y 8" and "Y 9.")

Q. I now hand you a letter purporting to have been written by John Sullivan, dated May nineteenth, nineteen hundred, together with the envelope accompanying the same, and ask you if the letter and the address on the envelope is in the handwriting of John Sullivan.

A. I should say that that was his.

Mr. HOWE: I offer them in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial.

(Letter and envelope marked, respectively, Complainants' Exhibit "Y 10" and "Y 11.")

Q. I now hand you a letter dated May thirtieth, nineteen hundred, with the letter, and the envelope, and I ask you if the letter and the address on the envelope are in the handwriting of Mr. John Sullivan?

A. I should say that they were the same; yes, sir.

Mr. HOWE: I offer these in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial.

(Letter and envelope marked, respectively, Complainants'
284 Exhibits "Y 12" and "Y 13," filed and recorded herewith.)

Q. Now, I show you a letter bearing date, June nineteenth, nineteen hundred, purporting to be signed by John Sullivan, together with the envelope accompanying the same, and ask you if the letter and the address on the envelope are in the handwriting of John Sullivan.

A. I would say that they were.

Mr. HOWE: Offer the letter and envelope in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial.

(Letter and envelope marked, respectively, Complainants' Exhibits "Y 14" and "Y 15.")

Q. I now hand you a letter dated September twelfth, nineteen hundred, purporting to be written by John Sullivan, signed by him, and the envelope accompanying the same, and ask you whether the address on the letter and envelope are in the handwriting of John Sullivan.

A. I would say that they were.

Mr. HOWE: I offer them in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial, and for the further reason that the letters are not the property of the complainant.

(Letter and envelope marked, respectively, Complainants' Exhibits "Y 16" and "17 Y.")
(Witness excused temporarily from the stand.)

285 Mr. TERENCE O'BRIEN, a witness called on behalf of the complainant-, being first duly cautioned and sworn, testified as follows:

(Mr. HOWE:)

Q. Mr. O'Brien, what is your name?
A. Terence O'Brien.
Q. Are you the administrator of the estate of John Sullivan, deceased?
A. Yes, sir.
Q. Is that the John Sullivan who was the owner of the Sullivan block?
A. Yes, sir.
Q. How long have you been the administrator?
A. Almost fourteen months.
Q. Did the papers of John Sullivan come into your possession?
A. Yes, sir, quite a number of the papers were turned over to me by the special administrator.
Q. You have been served, I believe, with the *subpœna duces tecum*—that is, a subpœna to produce certain papers in this case?
A. Yes, sir.
Q. Have you the papers called for in that subpœna?
A. Yes, sir.
Q. I wish you would produce them. (Does so.) Were the papers which you just handed me and which are receipts, dated, respectively, August fourth, nineteen hundred, August eleven, nineteen hundred, August eighteen, nineteen hundred, August twenty-five, nineteen hundred, September first, nineteen hundred, December eighth, nineteen hundred, and September fifteenth, nineteen hundred, turned over to you as papers belonging to John Sullivan?
286 A. Yes, sir. I found them amongst the papers turned over. I did not give a receipt for these. They were amongst the papers that were in Dexter-Horton's bank which were turned over to me, including these and other matters.
Q. Have they been kept by you as papers belonging to the estate of John Sullivan?
A. Yes, sir, kept in the safe.

Mr. HOWE: We offer these in evidence.
Mr. HAYS: I object as incompetent, irrelevant and immaterial.
(Witness and counsel waive his signature of his testimony.)
(Witness excused from the stand.)

Mr. ROLAND H. DENNY, recalled for further direct examination, testified as follows:

(Mr. HOWE:)

Q. I hand you, Mr. Denny, these seven receipts, and ask you if the name "John Sullivan" on these receipts and of the matter of the receipts with the signature of the receipts are in the handwriting of John Sullivan?

A. I should say that they were.

Mr. HOWE: We now offer these seven receipts in evidence.

Mr. HAYS: I object upon the ground that it is irrelevant, incompetent and immaterial under the issues.

(Papers marked Complainants' Exhibit "Y 18," and filed and returned herewith.)

(Witness excused from the stand.)

287 Mr. TERENCE O'BRIEN, recalled for further direct examination, testified as follows:

(Mr. HOWE:)

Q. How long have you known John Sullivan?
A. About 32 years; since I came to Seattle.
Q. What was his religion?
A. Roman Catholic.
Q. All his life?
A. As far as I know.
Q. You knew him well?
A. I knew him quite well.

(Witness excused from the stand.)

Mr. ROLAND H. DENNY, recalled, for further direct examination, testified as follows:

(Mr. HOWE:)

Q. I now hand you a letter dated eighteen hundred and ninety-six, December sixteenth, and ask you if that is the handwriting of John Sullivan?

A. I should say that it was.

Mr. HOWE: I offer this letter in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial under the issues.

(Paper marked Complainants' Exhibit "Y 19," filed and returned herewith.)

Q. I now hand you a letter dated July thirteenth, eighteen hundred and ninety-six, and ask you if that is in the handwriting of John Sullivan?

A. I should say that it was.

Mr. HOWE: I offer this in evidence.

Mr, HAYS: I object as incompetent, irrelevant and immaterial.

(Paper marked Complainants' Exhibit " Y 20," filed and returned herewith.)

288 Q. I hand you a letter dated July eighteenth and ask you if that is in the handwriting of John Sullivan?

A. I would say that it was.

Mr. HOWE: I offer this in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial under the issues.

(Paper marked Complainants' Exhibit " Y 21," filed and returned herewith.)

Q. I now hand you a letter dated March first, eighteen hundred and ninety-nine, purporting to have been written by John Sullivan, and ask you if it is in the handwriting of John Sullivan?

Mr. HOWE: I offer this in evidence.

A. I would say that it was.

Mr. HOWE: I offer this in evidence.

Mr. HAYS: I object as incompetent, irrelevant and immaterial under the issues.

(Paper received and marked Complainants' Exhibit " Y-22.")

Q. I now hand you a letter dated May nineteenth, nineteen hundred, purporting to have been written by John Sullivan to Eugene Collins, and ask you if that is the signature of John Sullivan?

A. I should say that it was.

Q. Now, as to John Sullivan, you say these letters were written by, is the John Sullivan of Seattle, the owner of the Sullivan building?

A. Yes sir.

289 Mr. HAYS: I object as incompetent, irrelevant and immaterial.

(Paper marked Complainants' Exhibit " Y-23," filed and returned herewith.)

Q. I now show you a letter dated November nineteenth, eighteen hundred and ninety-five, which has been marked Complainants' Exhibit " W," attached to the depositions taken in Ireland and ask you in whose handwriting that is?

A. I should say John Sullivan's handwriting.

Mr. HOWE: I offer that letter in evidence.

Mr. HAYS: I object to it being offered because it has been once offered in this case and is in the case as an original part of the evidence.

(Paper marked Complainants' Exhibit "Y-24.")
(Counsel and witness waive the signature of the witness to his testimony.)

Mr. E. P. ERWIN, a witness called on behalf of the complainant, being first duly cautioned and sworn, testified as follows:

(Mr. HOWE:)

Q. Mr. Erwin, what is your name?
A. E. P. Erwin.
Q. What is your business?
A. I am deputy county clerk of King county.
Q. Of the superior court?
A. Of the superior court.
Q. How long have you been a deputy clerk?
290 A. Since some time in May.
Q. For six months last past?
A. Yes, sir, at the least.
Q. Have you in your possession any of the original files in the matter of the estate of John Sullivan, numbered 3664?
A. Yes, sir.
Q. I wish you would produce the original petition of Dausset and Carrou, for letters of administration. (Witness does so.) Is the paper which you hold in your hand the original petition?
A. Yes, sir.
Q. I hand you a paper which purports to be a certified copy of that instrument and ask you whether you have compared this copy with the original, and if so whether that is a true and correct copy of that original?
A. I did compare it and it is a true and correct copy.
Q. Is the original in your possession as clerk of the superior court?
A. Yes, sir.

Mr. HOWE: We now offer in evidence the petition of Mary Carrau and Marie Carreay and Dausset for letters of administration.
Mr. HAYS: I object to the evidence as being incompetent, irrelevant and immaterial and not tending to support any issue in this case.
(Paper marked Complainants' Exhibit "Y-25," filed and returned herewith.)

Q. I ask you to produce the claim of Margaret Lowney and Michael Sullivan—have you the original in your possession?
A. Yes, sir.
291 Q. I show you what purports to be a certified copy, certified by you as clerk of the court and ask you if that is a document which I show you, a true copy of the original in your possession and whether you have examined to see whether it was a true copy?

A. It has been compared and I know it to be correct.

Mr. HOWE: We offer that paper in evidence.
Mr. HAYS: I renew my last objection.
(Paper received and marked Complainants' Exhibit "Y-26," filed and returned herewith.)

Q. The file-marks on that paper are correct, are they?
A. Yes, sir, these are taken from the original file-marks.
Q. I now hand you the notice and the entry of appearance of Wilshire & Kenaga in behalf of John Sullivan, deceased, in the same case, and ask you whether you have the original in your possession?
A. Yes, sir, I have.
Q. I show you what purports to be a true and correct copy and ask you if you made this copy and if you have the original of it here, and if that is a true copy.
A. I did not make it.
Q. Have you compared it?
A. Yes, sir, I have compared it but I did not make it.
Q. Is it a true copy?
A. It is a true copy, yes, sir.

Mr. HOWE: We offer this paper in evidence.
292 Mr. HAYS: I object as incompetent, irrelevant and immaterial.
(Paper marked Complainants' Exhibit "Y-27," filed and returned herewith.)

Q. Have you the petition of Mary Carreau, for the probating of the alleged nuncupative will of John Sullivan?
A. Yes, sir.
Q. I show you a copy of the same certified to by you and ask you if you compared that with the original and if it is a true and correct copy?

Mr. HAYS: I object to that on the ground that it is incompetent under any issues in this case.
Mr. HOWE: We offer this in evidence.
(Paper marked Complainants' Exhibit "Y-28.")

Q. I ask you to produce the order for the side issue in the same matter, the original, if you have it in your possession?
A. Yes, sir, I have.
Q. I show you what purports to be a copy of the same, certified to by you and ask you if you compared this copy and whether it is a true and correct copy?
A. Yes, sir, I have compared it and it is a true and correct copy.

Mr. HOWE: We now offer this in evidence.
Mr. HAYS: We renew our objection.
(Paper marked Complainants' Exhibit "Y-29" filed and returned herewith.)

Q. I ask you if the original which you have produced here is in typewriting, printed, whether it is written with a pen?

293 A. It is written with a pen.

Q. Do you know whose handwriting the original is?

A. I do not.

Q. I now ask you to produce the citation and return issued in the same matter, have you the original in your possession?

A. Yes, sir, I have.

Q. I show you what purports to be a copy of the same certified to by you both of the citation and the sheriff's return, and ask you if the copy which I show you has been examined by you and compared with the original and if it is a true and correct copy?

Mr. HAYS: I object as incompetent, irrelevant, and immaterial.

A. Yes, sir, I have compared it with the original and it is a true, and correct copy.

Mr. HOWE: We offer this in evidence.

Mr. HAYS: We renew our last objection.

(Paper marked Complainants' Exhibit "Y-30," filed and returned herewith.)

Q. I now ask you to produce the certificate of the probate will the original, if you have it in your possession?

A. Yes, sir, I have.

Q. I show you what purports to be a copy of that instrument certified to by you, and ask you whether you have compared this copy with the original, and if you know it to be a true and correct copy of the original?

A. Yes, sir, I have compared it and know it to be a true and correct copy.

294 Mr. HOWE: We offer this in evidence.

Mr. HAYS: We object as incompetent, irrelevant, and immaterial.

(Paper marked Complainants' Exhibit "Y-31," filed and returned herewith.)

Q. I will ask you whether the original instrument which you hold in your hand is in the printed form or whether it is typewritten?

A. It is typewritten.

Q. I now ask you to produce the original decree, if you have it in your possession?

A. Yes, sir, I have.

Q. I show you what purports to be the same, certified to by you, and ask you whether you have compared it with the original and if it is a true and correct copy?

A. Yes, sir, it is a true and correct copy.

Mr. HOWE: We offer this in evidence.

Mr. HAYS: We object as incompetent, irrelevant, and immaterial.
(Paper marked Complainants' Exhibit "Y-32," filed and returned herewith.)

Q. I will ask you whether the original which is in your possession is on a printed type or is it typewritten?
A. It is typewritten.
Q. I now ask you to produce the petition, the original petition of Hannah Calligan and Edward Corcoran, petitioners contesting the pretended nuncupative will of John Sullivan, deceased. Have you the original in your possession?
A. Yes, sir.
295 Q. I have—I hand you what purports to be a copy of the same certified to by you, and ask you whether you have compared it with the original and if it is a true and correct copy?

Mr. HAYS: We object as incompetent, irrelevant, and immaterial.

A. Yes, sir, I have.
Q. Is it a true and correct copy?
A. It is a true and correct copy.
Q. You have examined to see whether it was?
A. Yes, sir, I compared it personally.

Mr. HOWE: We now offer this in evidence.
Mr. HAYS: We object as incompetent, irrelevant, and immaterial.
(Paper marked Complainants' Exhibit "Y-33.")

Q. Please produce the answer of Marie Carrou to that petition if you have it in your possession?
A. Yes, sir, I have.
Q. I hand you what purports to be a copy of the same, certified to by you, and ask you whether you have compared it with the original and if it is a true and correct copy?
A. Yes, sir, I have compared it and it is a true and correct copy.

Mr. HOWE: We offer this in evidence.
Mr. HAYS: We object as incompetent, irrelevant, and immaterial.
296 (Paper marked Complainants' Exhibit "Y-34," filed and returned herewith.)
Mr. HOWE: That is all.
Mr. HAYS: We have no cross-examination.
(Signature of the witness waived by the witness and by counsel.)

Mr. CHARLES H. FARRELL, a witness called on behalf of the complainant-, being duly sworn, testified as follows:

(Mr. HOWE:)

Q. Mr. Farrell, what is your name?
A. Charles H. Farrell.
Q. Where do you reside?

A. Seattle, Washington.
Q. How long have you resided here?
A. About two years and a half.
Q. What is your business or profession?
A. Attorney at law.
Q. I believe you are one of the solicitors for the complainant in the case where Hannah Caligan and Edward Corcoran are complainants and Terrence O'Brien is administrator of the estate of John Sullivan, deceased, and Marie Carrau are defendants.
A. Yes, sir, I am.
Q. Did you go to Ireland in September, nineteen hundred and one?
A. Yes, sir.
Q. When in Dublin did you meet Eugene F. Collins, a solicitor in Dublin?
A. Yes, sir, I did.
297 Q. Did you have any business transactions with Mr. Collins with reference to this case?
A. Yes, sir, I did.
Q. I now hand you a paper dated the eleventh day of October, nineteen hundred and one, signed as follows: "Piles, Donworth & Howe *to* and C. H. Farrell per H. Eugene F. Collins," and ask you whether you signed the name of Piles, Donworth & Howe and C. H. Farrell per F.?
A. Yes, sir.
Q. Did Eugene F. Collins sign the name of Eugene F. Collins to that instrument?
A. Yes, sir.
Q. In whose handwriting are these words, "Received the sum of twenty pounds. Eugene F. Collins, dated eleventh of October, nineteen hundred and one."
A. That is Mr. Eugene F. Collins' handwriting.
Q. In whose handwriting is the writing of the same?
A. That is his also.
Q. Now, when you say that it is in his handwriting, is in the handwriting of Eugene F. Collins, did you see him sign the instrument?
A. Yes, he signed that in my presence.
Q. I call your attention to this interlineation about walf way down the page and ask you in whose handwriting that interlineation is?
A. That is Mr. Collins' handwriting.
Q. Did you see him interline that?
A. Yes, sir, he wrote that in my presence.

Mr. HOWE: I offer this instrument in evidence.
298 Mr. HAYS: I object to the instrument on the ground that it is incompetent, irrelevant and immaterial, and tending to support no issue in this case.

(Paper marked Complainants' Exhibit "Y-35," filed and returned herewith.)

Mr. Howe: Complainants offer this document in evidence, especially for the purpose of showing that the charges made by Conovan and placed by Mr. Hays on the record here at the opening of this testimony, before the present examiner, are unfounded and untrue, and also for the purpose of showing that the statement that Mr. Howe made over in Ireland, as the reason for not calling Lyons and Mr. Collins as the witnesses on the ground that Mr. Collins was in collusion with Marie Carrau, has been substantiated.

Mr. Hays: I further object on the ground that there is no issue in this case in which Mr. Collins is a party or has any interest, and there is nothing in this document that relates to the objections to the use of the letters that have been offered, and no reference therein made to a single letter, for this reason it is wholly incompetent.

Q. Now, Mr. Farrell, prior to the execution of that instrument and prior to the payment of the twenty pounds, did you have any discussion with Mr. Collins in regard to letters written by John Sullivan to Mrs. Lyons?

Mr. Hays: I object as the transactions between Mr. Collins and Mr. Farrell seems to be in writing.

299 A. Yes, sir.

Q. Did Mr. Collins claim to have any letters written by Mr. Sullivan?

A. Yes, sir.

Q. Would he allow you to see these letters and read them?

A. No, sir.

Q. What did you have to do, if anything, in order to see such of the letters as were in his possession?

Mr. Hays: I object as incompetent, irrelevant and immaterial.

A. I had to pay him twenty pounds and agree to pay him, I think, twenty pounds in the future, some future date.

Q. Did he at that time state whether he had all of the letters from Mr. Sullivan to Mrs. Lyons in his possession or whether he would have to send for any?

A. He said he did not have all of them, but he would make arrangements to secure the balance of them from Mrs. Lyons.

Q. At that time he did turn over some of the letters, did he not?

A. Yes, sir.

Q. Now, did you pay him the twenty pounds?

A. Yes, sir.

Cross-examination.

(Mr. HAYS:)

Q. Mr. Farrell, when did you first go to Ireland with reference to this alleged heirship?

A. I went in—I arrived at Queenstown, Ireland, on the second of October, I think it was.

Q. Of what year?

300 A. Nineteen hundred and one.

Q. Hay anyone been over there connected with you, previous to this, with reference to this alleged heirship?

Mr. HOWE: I object as immaterial.

A. Not a member of our firm; no.

Q. Anyone there as representatives, agent or any way connected with you in the transaction?

A. Yes, sir.

Q. Who was that person?

A. John B. Wright.

Q. Anyone else?

A. No one that I know of.

Q. You would know of it if there was?

A. I would after I was retained in the case.

Q. Well, have you not since you have been retained in the case, learned the fact that there was another person besides Mr. Wright, that went over there on this fishing excursion?

Mr. HOWE: I object to that question.

Q. On a fishing excursion?

Mr. HOWE: I object as irrelevant.

Q. To see if they could not discover the heir or heirs?

A. I do not know of anyone that went over representing the firm of Piles, Donworth & Howe, but myself after I was retained in the case, other than Mr. Wright.

Q. Don't you know the fact there was some one that went over previous to your being retained in this case with Mr. Wright?

A. No, sir, I did not.

Q. You do not say there was not any other person?

301 A. Well, I would not say that because I do not know of anybody going over there.

Q. Who furnished the money?

Mr. HOWE: I object as not proper cross-examination, and as incompetent, irrelevant and immaterial.

Mr. HAYS: He has already stated that he has paid out a hundred dollars.

Q. Who furnished you the money, the twenty pounds, which you say that you paid Mr. Collins?

A. I paid that out of my own money.
Q. In what form did you pay it?
A. I gave it to him in gold.
Q. In gold?
A. Yes, sir.
Q. In American or English money?
A. English money.
Q. Was there anyone present when you gave it to him?
A. Yes, sir.
Q. Who?
A. John B. Wright was present.
Q. Did John B. Wright take any hand or any part in any negotiations for the possession of these letters?
A. Yes, sir.
Q. What part did he take in that negotiation?
A. He went over the matter the same as I did. We both talked to him in regard to these letters and other information that he might have between himself and Mr. Sullivan and Mrs. Lyons.
Q. Now, Mr. Farrell, when these *are* given by Mr. Collins to you, was Mr. Wright present?
A. Yes, sir.
302 Q. Was they given to you at the same time or was a portion of the letters furnished you later?
A. I never received any other letters after that.
Q. Did you know as a fact that there were any other letters furnished to you or Mr. Wright or Mr. Howe by Mr. Collins?
A. I never saw them deliver any of them. I understood that he did deliver some of them, but I was not present at the time. He stated at the time that there were other letters that he would not deliver until later on.
Q. When he did deliver these letters he delivered them to whom, Mr. Wright or Mr. Howe—as you understand it the additional letters?
A. Well, I do not know which it was, that was after——
Q. What was the condition of the delivery of these letters to you?
A. Well, the payment of this sum of money.
Q. Were they thereafter to be your property?
A. Yes, sir.
Q. Were you to return these letters to Mr. Collins on the taking of testimony in Queenstown?
A. No, sir.
Q. Or in Cork or Dublin?
A. No, sir, nothing said about the return of them. They were turned over to me, to the firm to be used as we saw fit in this case.
Q. You were to have Mr. Collins to testify also?
A. Yes, sir.
303 Q. And this twenty pounds that you paid him and the contingent twenty pounds you were to give him was for his testimony?

A. For his testimony and for these letters which he had and for which he was thereafter to secure and he claimed there were some other letters that he would get later on.

Redirect examination.

(Mr. HOWE:)

Q. In regard to his testimony, Mr. Farrell, Mr. Collins was a solicitor, was he not?

A. Yes, sir.

Q. Did he state whether or not that he would attend and give his deposition without being paid?

A. He said that he would not unless he was paid, his expenses were paid; he said that he was engaged in the practice of law and that he could not very well afford to go to Queenstown unless he was paid for his time.

(Mr. HAYS:)

Q. How long were you in Ireland previous to the taking of any testimony in this case?

A. Oh, I was in Ireland the greater part of the time for six or seven weeks before the taking of testimony.

Q. Your mission to Ireland was to procure witnesses, evidence and testimony, to establish the alleged claim of these complainants, the heirship, was it not?

A. Yes, sir.

Q. You were quite active during the time that you were there in securing witnesses that might give testimony in some form or other that would tend to that end?

304 Mr. HOWE: I object as not proper cross-examination and as irrelevant and immaterial.

Q. Did you make any contract of employment with your firm for either of the complainants?

A. No, sir, I did not.

Q. Did any member of your firm?

A. No, sir, not to my knowledge.

Q. Do you know the fact whether you have been retained by the complainants in this case?

A. Yes, sir.

Q. How do you know it?

A. By communications with them.

Q. Then you have had with them communications which established the employment?

A. Yes, sir.

Q. Are they in writing?

A. No, sir.

Q. Have you any contract with these complainants, or employment or any authorization from them in writing?

A. No, sir, I have not.

Q. Has any member of your firm or the firm of Piles, Donworth & Howe and John B. Wright?

A. I do not know as to the firm; I have not any—that is no written authorization.

Q. Do you know the fact that there is any written authorization to your firm to appear for these complainants or the firm of Piles, Donworth & Howe or John B. Wright?

A. I think there is written authorization between the firm and them. There is not with me.

305 Q. In what way did you come into this case?

A. I was retained in the case by the firm of Piles, Donworth & Howe.

Q. Then you are mere counselor for the firm of Piles, Donworth & Howe?

A. I also represent the complainants through communications with them.

Q. Is that communication in writing?

A. No, sir.

Q. Have either of them paid you or your firm or any member of the firm of Piles, Donworth & Howe or John B. Wright any money or other consideration for appearing for them in this case?

A. They have not paid me, I do not know anything about the other members of the firm.

Q. Do you not know whether they have not?

A. I said that I did not.

Q. Has the firm of Piles, Donworth & Howe paid you anything?

A. No, sir.

Q. Then your appearing for the firm of Piles, Donworth & Howe is under what contract?

Mr. HOWE: I object as incompetent, irrelevant and immaterial and as not proper cross-examination.

A. I have a contract with them.

Q. It is in writing?

A. Yes, sir.

Q. In what way are you to be renumerated or compensated for your services by them?

Mr. HOWE: I object on the ground that the writing is the
306 best evidence. If he wants that we can produce the writing.

Mr. HAYS: I ask that the writing be produced.

Mr. HOWE: I will produce it at the next hearing; I have not got it with me.

A. (Continuing:) My contract is in the bank and the bank is closed, I can get it on Monday if it is wanted.

Q. Now, Mr. Farrell, then during the whole time you were in Ireland you received no money from either of these complainants either for your expenses or for compensation for your services?

A. No, sir, I did not.

Q. You spended your own money in the services of this case thus far both in the defraying of the necessary expenses while in Ireland and while going to and from Ireland?

A. Yes, sir. My own money and the money of the firm of Piles, Donworth & Howe. I do not know where they got it they gave me some money to pay my expenses.

Q. Then you did not pay your own expenses?

A. I told you that I paid part of them and they paid part of them.

Q. You have an understanding between yourselves what proportion you are to pay?

A. No, sir, there was nothing said about that, there was no understanding about that at all.

Q. How much money did you expend in Ireland in procuring testimony there in the way of witnesses?

307 Mr. HOWE: I object as irrelevant and not proper cross-examination.

A. I could not tell you just exactly what I did spend.

Q. Approximately?

A. Oh, possibly a thousand dollars.

Q. That was while you were in the *country* Cork and Dublin?

A. Yes, sir.

Q. Do you not think that you spent a little more than that?

A. I might have spent more or less.

Q. Did you pay any money to Hannah Caligan?

Mr. HOWE: I object as irrelevant, incompetent and immaterial and not proper cross-examination.

Mr. HAYS: She is one of the complainants in this case.

Q. Did you pay any money to Hannah Caligan?

A. I gave her some money; I did not pay her any money for anything.

Q. You furnished her some money?

A. Yes, sir.

Q. How much?

A. Oh, probably a pound or two.

Q. You do not know how much?

A. No, I do not.

Redirect examination.

(Mr. HOWE:)

Q. Mr. Farrell, you have been practicing law for several years?

A. Yes, sir, six or eight years in the practice.

308 Q. Have you ever had to advance money to clients before?

A. Yes, sir, in several places.

Q. Is it an unusual thing for lawyers to advance money to clients in this community?

A. It has not been for me. I do not know how about the rest of the practitioners.

Q. Now, when you say that you expended about a thousand dollars, more or less, that was to pay the expenses of your trip was it not?

A. Yes, sir, somewhere along there.

Q. And in your traveling you went on the continent did you not?

A. Yes, sir.

Q. And a thousand dollars covered your expenses more or less where you were absent from Seattle for about three months, did it not?

A. Yes, sir.

(Mr. HAYS:)

Q. Did you ride on passes or did you pay your way on the trains and boats?

A. I had transportation to St. Paul and return, I paid my fare the rest of the distance.

(MR. HOWE:)

Q. Just state, Mr. Farrell, what different cities you visited on that trip?

A. Do you mean all over Ireland?

Q. Yes, everywhere that this thousand dollars covers?

A. I visited Queenstown, Cork, Dublin, Belfast, Roastarberry, Bantry, Bandon and Clonakilty.

Q. Did you go to Killarney?

A. Yes, sir.

309 Q. Mr. Riddell wanted you to?

A. Yes, sir, we went there together.

Q. You do not know the amount of Mr. Riddell's expenses were on his trip across, do you?

A. No, sir, I do not.

Q. Have you examined Mr. Riddell's return to the probate court to ascertain whether he expended nine hundred and odd dollars to cover his trip over there?

A. No, sir, I have not.

Q. You went to London?

A. Yes, sir.

Q. You went to Paris, did you?

A. Yes, sir, Kingston and Hollyrood.

(Mr. HAYS:)

Q. Did you go to Paris in search for evidence for the complainant?

A. No, sir, that was for pleasure only.

Q. Was Mr. Howe with you on that trip to Paris?
A. No, sir.
Q. Did he go to Killarney with you?
A. No, sir, Mr. Riddell and I made that trip together.

(Testimony of witness closed.)
(Signature waived by the witness and counsel for respective parties.)

Mr. WILLIAM CORCORAN, a witness called on behalf of the complainant, being duly sworn, testified as follows:

(Mr. HOWE:)

Q. Mr. Corcoran, what is your first name?
A. William.
310 Q. Where do you reside?
A. Seattle.
Q. How long have you resided here?
A. Eight years.
Q. What is your business?
A. Deputy sheriff of this county.
Q. How long have you been deputy sheriff?
A. Since January fourteenth, nineteen hundred and one.
Q. Do you remember of taking a return of a citation issued on a petition of Marie Carrou to probate the alleged nuncupative will?

Mr. HAYS: Is the return in writing?
Mr. HOWE: I will introduce a certified copy of it.
Mr. HAYS: That is the best evidence. I object to the question as incompetent, irrelevant and immaterial, as the writing of the return is the best evidence of it.

Q. Did you make a return?
A. I made a return on the citation. I think you refer to the same one in the Sullivan estate.
Q. I hand you what purports to be a certified copy of your return and ask you whether you recollect the transaction?
A. Yes, sir, I remember the occasion.
Q. Who handed the citation to you?
A. Mr. Riddell, of the firm of Pratt & Riddell.
Q. Did you go outside of your office to ascertain whether there was a widow or next of kin of John Sullivan, deceased?
A. I did not.
311 Q. What did Mr. Riddell say when he handed you the citation?
A. He said—now, I give the substance of what he said: "You know of no next of kin of John Sullivan, deceased," and, I think, "in the State of Washington"? I do not remember for sure, I simply remember him using the phrase, "next of kin," and my memory is

clear about that, but the balance of what he said I do not remember clearly.

Q. What did you answer to that?

A. I told him that I did not know of any next of kin of John Sullivan, deceased, in the State of Washington. Shall I go right along with the conversation?

Q. Yes.

A. He asked me if I would make the return and I said "Certainly I will make such a return," and I immediately made the return.

Q. How long do you suppose Mr. Riddell was in your office—how long did he stick for you to make that return?

A. Why I will have to guess at the time; it might have been a minute or two.

Q. You did not make any search at all?

A. No, I did not make any search.

Q. The whole thing occupied a minute or two?

A. Yes, sir.

Q. Do you recollect whether that was prior to nine thirty o'clock in the morning?

312 A. I do not remember; my memory is not clear as to the time of day that it occurred.

Q. Well, if the citation called for the widow and next of kin to appear on the same day at ten o'clock and was issued on that day, has that anything to do with the reviving of your recollection as to the time when you made that return?

A. No, it was not. Because I have no recollection about that matter that was contained -n the citation itself.

Q. Do you know what time of day Judge Tallman usually arrives at the courthouse?

A. Yes, sir; I know the time that he usually arrives,

Q. What time?

A. Usually a few minutes before nine thirty in the morning.

Q. You do not recollect whether on that date he arrived at any other than his usual hour, do you?

A. No, I do not.

Cross-examination.

(Mr. HAYS:)

Q. Mr. Corcoran, what was your business prior to the position that you are in as deputy sheriff?

A. I was deputy clerk of the court for four years.

Q. At the time of your service as deputy clerk of the court, you were aware of the death of the deceased, John Sullivan?

A. Yes, sir.

313 Q. And of his estate being admitted to the bond through your court?

A. Yes, sir.

Q. You were aware that letters of administration had been issued to the present administrator, Terence O'Brien?

A. Yes, sir.

Q. And that administration had been founded upon the alleged fact that there was no widow and next of kin of the said John Sullivan, deceased?

A. That is my understanding.

Q. And that all of the claims that had been ever made for the estate of John Sullivan up to that time, had been that there were no relatives and no next of kin. Claims that had been made in connection *of* the e-tate, of the administration of the estate, the papers in connection with the obtaining of the letters of administration of the estate, you remember there were a numeber of applicants for appointment of that administrator?

A. Yes, sir, I do.

Q. And that it was hotly contested?

A. Yes, sir.

Q. And that fact was brought home to your knowledge?

A. Yes, sir.

Q. And the fact was further brought home to your knowledge at that time John Sullivan was a bachelor, leaving no widow, that he had been an old citizen, a resident of the city of Seattle for many years. It was understood generally, was it not, that John Sullivan was a bachelor at the time of his death?

314 A. Well, that was my understanding.

Q. That he had no widow, you so understood it?

A. I so understood it.

Q. It would have been an idle thing for you in the discharge of your official position to make an idle chase across the wild waves or anywhere to look for the widow or next of kin of John Sullivan?

A. I guess that was the way that I looked at it.

Q. You were satisfied from your own personal knowledge and from all you heard in connection with your official position as clerk of the superior court of King county that John Sullivan had no widow and that he left no next of kin?

A. So far as the State of Washington is concerned——

Q. Or any other State at that time?

A. I would not make it so broad as that, I could not do that. I returned that—what I had been thinking all the time is that I returned, attached that return to the citation, the fact that in the State of Washington I could not find—in King county I could not find the next of kin of John Sullivan. I did not mean to be understood as saying——

Q. That was founded upon your general understanding?

A. That I did not know at that time that there was some claim on the part of some people that they were heirs and next of kin of John Sullivan, deceased, but I knew that these people mak-

315 ing such claims were, or I had been told, had reason to believe that they were not in the State of Washington.

Redirect examination.

(Mr. HOWE:)

Q. All that you meant to certify was that you could not find anybody, you did not know where to find anybody in King county?
A. That is all.
Q. At that time you were unaware, were you not, that there was on file a notice by Wilshire & Kenaga, representing Jerome Sullivan, James Sullivan and Margaret Maloney, and Katherine Swing, and others who claimed to be heirs of John Sullivan. You did not know that that was on file, did you?

Mr. HAYS: I object as incompetent and as not the best evidence. The record is the best evidence.

A. Well, I will say that I did not consider making my return. I did not have in mind that there was any such petition in existence, although I am not so positive that a petition might not have been filed in the probate department of the superior court while I was there. But I did not have it in mind and it was not considered by me.
Q. Neither did you have in mind that Preston, Carr & Gilman had filed a like claim on behalf of Margaret Lowney and William Sullivan?
A. No, I did not.

(Testimony of witness closed.)
316 (Signature of testimony reserved by the witness and counsel for the respective parties.)
At this time further proceedings were adjourned until January 22, 1902, at 10 o'clock a. m.

SEATTLE, *January* 22, 1902—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.
Present: Mr. James B. Howe, counsel for the complainant-.
Solicitor for the respondent- not appearing, and after waiting after eleven o'clock a. m., further hearing was continued until 2 o'clock p. m. on this date.

Afternoon session.

Continuation of proceedings pursuant to adjournment.
Present: Mr. Howe, one of the solicitors for the complainant-. Mr. Hays, solicitor for the respondent- and Marie Carrou.

Mr. C. H. FARRELL, recalled on behalf of the complainant-, testified as follows:

(Mr. HOWE:)

Q. Mr. Farrell, I hand you a photograph. The persons shown in the photograph being numbered 1 to 11, both inclusive, and ask you to give the names of these parties. Who is number one?

Mr. HAYS: I object to the question with reference to the alleged picture as being incompetent, irrelevant and im-
317 material. No foundation laid for such evidence in this case.

A. Mrs. Norah O'Connell.
Q. Who is number two?
A. Mrs. Cowig.
Q. Who is number three?
A. Number three is Mrs. O'Leary.
Q. Who is number four?
A. Daniel Burk.
Q. Who is number five?
A. Dennis Reardon.
Q. Who is number six?
A. Dennis Murphy.
Q. Who is number seven?
A. Mrs. Davidson.
Q. Who is number eight?
A. Mrs. Cronin.
Q. Who is number nine?
A. Mrs. Kiley.
Q. Who is number ten?
A. Mrs. Murphy.
Q. Who is number eleven?
A. Mrs. Cronin.
Q. Do you know where these people reside?
A. Yes, sir.
Q. Where?
A. In the city of Cork, Ireland.
Q. Did you see them when you were there?
A. Yes, sir, I saw them all, I think. Possibly one was not there, but I am not sure that I saw her or not.
Q. When you saw these people did you talk with them with reference to their being witnesses in the case now on trial?
A. Yes, sir.

Mr. HOWE: We now offer in evidence the photograph identified by the witness.

Mr. HAYS: I object to the evidence as irrelevant and immaterial.

318 (Photograph marked Complainants' Exhibit "Y-36," filed and returned herewith.)

Q. I now hand you another photograph and ask you if you know who that is?
A. Yes, sir.
Q. Who is it?
A. Dennis Murphy.
Q. The same Dennis Murphy shown in the other picture?
A. Yes, sir.

Q. Do you know Mr. Farrell where that Dennis Murphy, whose photograph you now hold in your hand worked?
A. Yes, sir.
Q. Where did he work?
A. In Bemish and Crawford's brewery in Cork Ireland.
Q. Did you see him yourself?
A. Yes, sir, I talked to him.
Q. *Do you this* is his photograph?
A. Yes, sir.

Mr. HOWE: I offer this in evidence and ask that it may be marked.
Mr. HAYS: I object to the evidence as being irrelevant, incompetent and immaterial.
(Photograph marked Complainants' Exhibit "Y-37," filed and returned herewith.)

Q. I now hand you another photograph and ask you who that is.
A. Yes, sir.
Q. Who is it?
A. It is Dennis Reardon, of Cork, Ireland.
Q. Did you see him in Cork?
A. Yes, sir.
319 Q. Did you have any talk with him with reference to being a witness in this case?
A. Yes, sir.
Q. Do you know whose photograph—do you know this is his photograph?
A. Yes, sir.

Mr. HOWE: I offer this in evidence.
Mr. HAYS: I object as incompetent, irrelevant and immaterial.
(Photograph marked Complainants' Exhibit "Y-38," filed and returned herewith.)

Q. I now hand you another photograph and ask you if you know whose photograph that is?
A. Yes, sir.
Q. Whose is it?

Mr. HAYS: I object as incompetent, irrelevant and immaterial.

A. That is Canon Terry, the parish priest of Cologelin, Ireland.
Q. Did you have any talk with Canon Terry while in Ireland?
A. Yes, sir.
Q. With reference to being a witness in this case?
A. Yes, sir.
Q. Do you know that to be his photograph?
A. Yes, sir.

Mr. HOWE: I offer this picture in evidence.
Mr. HAYS: I object as incompetent, irrelevant and immaterial.
(Paper marked Complainants' Exhibit "Y-39," filed and returned herewith.)

320 Q. Mr. Farrell, was Mr. Collins to give any testimony in the case other than to produce the letters which have been put in evidence here, and to identify them?
A. No, sir.

Mr. HOWE: Now, Mr. Hays, in the last hearing you examined Mr. Farrell as to the matter of his employment and you demanded the production of certain documents. I have produced here two contracts, one from Hannah Caligan and Arthur Lewin, one from Edwin Corcoran and Arthur Lewin. I also produce a contract in regard to Mr. Farrell's employment and in relation to the private affairs of our office. I have no objection to anything in that contract being known, but I simply want to give notice at this time that that is a private contract relating to our office, and if you or any other counsel on your side read that document I will consider that all professional etiquette is thrown aside and I will probe the relation of Mr. Riddel and yourself to this court down to the bottom, and now produce it so that you can read it.

Mr. HAYS: I wish to state in relation to the cross-examination of Mr. Farrell, it only went to the question of whether he had been employed by Hannah Caligan and Edward Corcoran, and with no desire to probe into the private matters of the office of the firm of Piles, Donworth & Howe, or to draw from the witness any confidential communication or relation of himself and his client. Well
321 knowing that such evidence is incompetent, and I have no desire, or would I think of reading any confidential communication between counsel, either in connection with office affairs or in connection *to* the employment of these complainants. Nor do I ask that the evidence shall be produced for any purpose on the side of the defendant-.

Mr. HOWE: We produce the papers called for. Do you wish them or not?

Mr. HAYS: I do not.

(Testimony of witness closed.)

Mr. SCOTT CALHOUN, a witness called on behalf of the complainants, being duly sworn, testified as follows:

(Mr. HOWE:)

Q. Mr. Calhoun, what is your name?
A. Scott Calhoun.
Q. What is your profession?
A. Attorney at law.
Q. Where do you reside?
A. In Seattle.
Q. Are you in any business relation with the firm of Piles, Donworth & Howe?
A. I am employed there.

Q. Did you have anything to do — filing of the petition contesting the alleged nuncupative will set up by Marie Carrau in the superior court of the State of Washington for King county?

A. I filed the petition personally.

Q. Please state on what hour and what day you filed it.

322 Mr. HAYS: I object as being incompetent, irrelevant and immaterial. For the paper having been filed in the court of record, the paper is itself the best evidence as to when it was filed.

A. I filed the petition in the superior court on the twentieth day of June, nineteen hundred and one at the hour of four fifty-five p. m.

Q. What book are you referring to?

A. I am referring to the regular office blotter of the firm of Piles, Donworth & Howe.

Q. Is the entry in that book in your handwriting?

A. The hour of the filing is in my handwriting.

Q. Do you know as a fact that you did file it at that time?

A. I do.

Q. What causes you to know that you filed it at that time—is it customary to keep the exact minute?

A. No, but my instructions were when the papers were handed to me to be filed, to make the docket entry of the exact minute of the filing, which I have done and it is in my handwriting in this docket.

Q. Was the citation issued or placed in your hands for service after that?

A. It was issued at four fifty-six p. m. on the same date, and placed in the sheriff's hands for service at four fifty-six p. m.—placed in the sheriff's hands at four fifty-nine p. m. on the same day. I made the same entries as to the hour and minutes for the same reason that I made the first entry.

323 Mr. HAYS: I object and move that the answer be stricken as incompetent, irrelevant and immaterial as to when the citation was placed in the hands of the sheriff, as the paper itself is the best evidence.

Q. Now, if that petition which you filed is the petition contesting this nuncupative will by Hannah Calligan and Edward Corcoran?

A. Yes, sir.

(Testimony of witness closed.)

Mr. BOYD J. TALLMAN, a witness called on behalf of the complainant, being duly sworn testified, as follows:

(Mr. HOWE:)

Q. What is your name?
A. Mr. Boyd J. Tallman.
Q. Where do you reside?
A. Seattle, Washington.
Q. What official position do you hold?
A. One of the judges of the superior court of the State of Washington, for King county.
Q. How long have you been holding office as judge?
A. Since about the middle of last January.
Q. I believe the proceedings in reference to the probating of the will, the nuncupative will of John Sullivan deceased, and the—on the petition of Marie Carrou took place in the department over which you preside?
A. Yes, sir; that is correct.
Q. And you presided at the proceedings?
A. Yes, sir.

324 Q. I wish, Judge, you would state as nearly as you can the hour of the eighth day of March of nineteen hundred and one, that the petition was presented to you?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial. The record of the judicial proceedings is the best evidence of what was done and when it was done.

A. As nearly as I can remember, it was between eleven and twelve o'clock in the forenoon. I would say above half-past eleven. I can give you my reason for that if you desire.
Q. I just want to get the facts. Do you mean that was the time when the petition was presented?
A. That was the time the petition was presented to me, I do not know whether it had been filed with the clerk prior to that or not.
Q. I show you, Judge, the certificate of the testimony which has been filed—which was filed on the eighth day of March, nineteen hundred and one, and ask you whether you know or not whether that testimony was written out prior to the witnesses testifying?

Mr. HAYS: I object as incompetent, irrelevant and immaterial.

A. I will answer that that I do not, but I would like to explain. All I know is that as soon as we were through with the examination, this typewritten testimony was signed.

325 Q. Immediately after it was given?
A. Yes, sir. I do not know when it had been written.
Q. Now, Judge, can you tell me, if you know, in whose handwriting the names of these witnesses are? I do not mean the signature, but the blanks that are filled with their names?
A. No, I cannot.

Q. You recollect whether the probating and the decree in the case were all prepared—the certificate of the probate and the decree of probate?

Mr. HAYS: I object upon the ground that it is incompetent, irrelevant and immaterial. It being a decree of the court the record speaks for itself.

Q. Whether they are in typewriting?

A. My answer to that will be similar to my answer with reference to the testimony. I do not know whether the decrees were written out beforehand or not, but I do know that as soon as the testimony had been introduced and we were through with that matter the decrees or orders were passed up immediately and I signed them.

Q. Now, Judge, at the time that you signed the decree, I ask you—I assume that you did not know that there were on file two notices of parties claiming to be heirs, that matter was not brought to your attention?

A. It was not.

Q. And you did not know that Preston, Carr & Gilman, and Wilshire & Kenaga had filed a notification in behalf of heirs?

A. It was not called to my attention at all.

326 Q. Now, I show you, Judge, the original order for citation and call your attention to the fact that that is written with a pen. Do you know in whose handwriting that is?

A. Yes, sir.

Q. In whose handwriting is it?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial.

A. Mr. Charles A. Riddel's.

Q. Now, Judge, please state as nearly as you can at what hour you signed that order for the citation?

A. It was just prior to the hearing of the testimony, I should say about half-past eleven o'clock in the forenoon of the eighth day of March.

Cross-examination.

(Mr. HAYS:)

Q. The names of the witnesses who appeared in the evidence all testified before you, did they?

A. Yes, sir, they testified on the witness-stand as the witnesses do when the will is probated and then signed their testimony afterwards.

Q. And the testimony that they gave was the testimony substantially found in these facts?

A. Found in these orders?

Q. Yes.

A. Yes, sir.
Q. That is attached to their testimony as given upon the stand?
A. Yes, sir.

(Testimony of witness closed.)
327 (The signature of the testimony waived by the witness and by the solicitors for the respective parties.)

Mr. TERENCE O'BRIEN, recalled on behalf of the complainants, testified as follows:

(Mr. HOWE:)

Q. Mr. O'Brien, I neglected to ask you the other day how long you have been a citizen of the United States?
A. For the past twenty years.
Q. How long have you been a citizen and a resident of the State of Washington?
A. I have been a resident of the State of Washington since eighteen hundred and sixty-four, November—eighteen hundred and sixty-four when I first came here.
Q. And a citizen of the State about the same time?
A. I was not a citizen then; I was under age. My father became a citizen soon after.
Q. You have been a citizen of the State of Washington over twenty years?
A. Yes, over thirty years.
Q. Now please—now, then, — the death of John Sullivan had his — exceeded in value the sum of two hundred thousand dollars?
A. Yes, sir.
Q. Mr. O'Brien, on the eighth day of March, nineteen hundred and one, the date on which the proceedings were had with reference to the petition of Marie Carrau to probate the alleged will of John Sullivan, deceased, were you the administrator?
A. Yes, sir.
Q. Were you in town?
A. Yes, sir.
328 Q. Did you have any attorneys representing you at that time?
A. Yes, sir.
Q. Who were they?
A. The firm of Piles, Donworth & Howe were the attorneys for the administrator; they done the principal business for me at that time and Mr. Farrell.
Q. Did you have any notice or were you given any notice of Mary Carrau's application to probate the said alleged will?
A. No, sir.

Mr. HAYS: I move to strike the —. I did not have time to make my objection before the answer was made. I move to strike the

answer as being incompetent, irrelevant and immaterial and for the reason that the record is the best evidence.

Q. Did you know that it was to be probated on that day?

A. No, sir.

Q. I now show you Exhibit "B" attached to your original report as administrator, for August, nineteen hundred and one, and call your attention to the following item: "Paid Pratt & Riddell for cost advanced in the United States district court in the case of Hannah Caligan, Edward Corcoran *vs.* Terence O'Brien, voucher 264, ten dollars (10)." Do you remember paying that item?

A. Yes, sir.

Q. I call your attention to voucher 264, which reads as follows, "Seattle, Washington, August, twenty, '01. Ten dollars ($10). Received from Terence O'Brien, administrator of the estate of John
329 Sullivan, deceased, the sum of ten dollars for costs advanced *in re* Hannah Caligan, Edward Corcoran *vs.* Terence O'Brien, as administrator, in the U. S. circuit court. Voucher number 264. Pratt & Riddell." In whose handwriting is that receipt—do you know?

A. This is Mr. Riddel's.

Q. Did he give you that voucher?

A. Yes, sir, he gave me a duplicate voucher.

Q. What was that payment for?

A. Well, it was for the filing of a motion for costs.

Q. Was that motion for costs, the joint motion of Mary Carrau and yourself?

A. Yes, sir.

Q. Has Mary Carrau ever paid to you, as administrator, any portion of that ten dollars?

Mr. HAYS: I object to the question as incompetent, irrelevant and immaterial.

A. No, sir.

Q. Has any one in her behalf paid any part of that ten dollars?

A. No, sir; not to me.

Q. Do you know of her paying it to any one else?

A. No, sir.

Q. I call your attention to your report as administrator for the month of December, nineteen hundred and one, filed January seventh, nineteen hundred and two and call your attention to a paper dated January seventh, nineteen hundred and two, and signed, "C. A. Riddell," and ask you if that — Mr. Riddell's signature?

A. Yes, sir, that is it.

Q. I call your attention to the fact that in that document
330 it is stated by Mr. Riddell that his expenses in the matter of taking the depositions in Ireland, in this case was the sum of eight hundred and ninety-seven dollars and forty cents, and that he has attached vouchers, number one to nine inclusive. I ask you

whether the sum of eight hundred and ninety-seven dollars and forty cents was paid to Mr. Riddell for such expenses?

A. Yes, sir. Before leaving for Ireland he got a thousand dollars, and he reports having spent that much and he returned the balance to me by check.

Q. He returned the difference?

A. Between that amount and the thousand dollars.

Q. I called your attention to the vouchers attached, numbered from one to nine, inclusive, and ask you if these are the vouchers which Mr. Riddell turned in to you?

A. Yes, sir, these are the vouchers.

Q. I now call your attention to voucher number one for one hundred and one dollars, payment to include cabin ticket is that one of the vouchers?

A. Yes, sir.

Q. Voucher number two for eighty-seven dollars, railroad ticket, Seattle to New York, is that one of the vouchers?

A. Yes, sir.

Mr. HAYS: I wish to interpose at this point an objection to this evidence. *I do not captious* but it seems to be immaterial and incompetent, and it is simply lumbering the record unnecessarily.

331 Q. I call your attention to voucher number three, receipt of Imperial hotel, Cork, for three shillings and two pence, is that one of the vouchers?

A. Yes, sir, that is one of the vouchers.

Q. I call your attention to the receipt of the Imperial hotel, Cork, for five shillings and six pence, is that one of the vouchers?

A. Yes, sir.

Q. I call your attention to the Victoria hotel, voucher number four, ten pounds, five shillings and five pence; is that one of the vouchers?

A. Yes, sir.

Q. I call your attention to the receipt of Shelbon hotel, Dublin, two pounds, ten shillings and ten pence?

A. Yes, sir.

Q. Is that one of the vouchers?

A. Yes, sir.

Q. And to another receipt, Shelbon hotel, three pounds, nine shillings and three pence; is that another of the vouchers?

A. Yes sir.

Q. And the receipt of the Hotel Cecil, London, four pounds, four shillings and nine pence; is that one of the vouchers?

A. Yes, sir.

—. And the receipt of the Cunard, line, twenty-three pounds, nineteen shillings, return passage; is that one of the vouchers?

A. Yes, sir.

Q. And the receipt of the agent at New York for ticket from New

York to Seattle, eighty-six dollars and fifty cents; that is one of the vouchers?

A. Yes, sir.

332 Q. I call your attention to one, numbered five, Espates' proportion of the expenses of hearing, thirteen pounds, eight shillings and eight pence; is that one of the vouchers?

A. Yes, sir.

Q. That makes the ninth and last voucher, does it?

A. Yes, sir.

(Testimony of witness closed.)

Mr. ERWIN, recalled on behalf of the complainants, testified as follows:

(Mr. HOWE:)

Q. Mr. Erwin, I will ask you to produce—I will show you what purports to be a certified copy of the petition of Marie Carrau for distribution, and ask you whether you have compared this with the original, and if you know it to be a true and correct copy?

Mr. HAYS: I object to the question and the document on the ground that it is incompetent, irrelevant and immaterial.

A. Yes, sir, I compared it; it is a true and correct copy.

Q. You are the same Mr. Erwin who testified on Saturday that you were the deputy clerk in the superior court of the State of Washington for King county?

A. Yes, sir.

Q. Is the original *for* that document now present in the examiner's office?

A. Yes, sir.

Mr. HOWE: We offer this in evidence.

333 Mr. HAYS: We object as incompetent, irrelevant, and immaterial.

(Paper marked Complainants' Exhibit "Y-40," filed and returned herewith.)

Q. I now show you what purports to be a certified copy of the petition of Marie Carrau to revoke letters of administration to Terrence O'Brien, and to issue letters with the will annexed, and ask you whether you have compared that with the original document on file and whether it is a true and correct copy?

A. I have compared it and it is a true and correct copy; yes, sir.

Q. Is the original present in the office of the examiner?

A. Yes, sir.

Mr. HOWE: I offer this paper in evidence.

Mr. HAYS: I object for the reasons last stated.

(Paper marked Complainants' Exhibit "#Y-41," filed and returned herewith.)

Q. I now hand you a paper purporting to be a certified copy of the order allowing Marie Carrau to withdraw her petition, and ask you whether you have compared that with the original order, and if it is a true and correct copy?

A. Yes, sir, it is a true and correct copy.

Q. Is the original present?

A. Yes, sir.

Mr. HOWE: We offer this in evidence.

(Paper marked Complainants' Exhibit, "Y-42," filed and returned herewith.)

334 Q. I now hand you what purports to be a certified copy of the order denying the right of the State of Washington to appear in the matter of the estate of John Sullivan, deceased, and ask you if you compared that with the original and if it is a true and correct copy.

Mr. HAYS: I object as incompetent, irrelevant, and immaterial, and lumbering the record unnecessarily.

A. Yes, sir, I did, it is a true and correct copy.

Q. Is the original present?

A. Yes, sir.

Q. Is the original present?

A. Yes, sir.

Mr. HOWE: We offer this in evidence.

Mr. HAYS: I object as incompetent, irrelevant, and immaterial.

(Paper marked Complainants' Exhibit "Y-43," filed and returned herewith.)

Q. I now hand you what purports to be a certified copy of the order of the superior court, directing the administrator to pay to Mr. Riddell, the sum of one thousand dollars to attend the hearing of the taking of the depositions in Ireland, and ask you if you have compared that with the original and if it is a true and correct copy

Mr. HAYS: I object as incompetent, irrelevant, and immaterial.

A. I did, and it is a true and correct copy.

Q. Is the original present before the examiner?

A. Yes, sir.

Mr. HOWE: We offer this in evidence.

335 Mr. HAYS: We object as incompetent, irrelevant, and immaterial.

(Paper marked Complainants' Exhibit "Y-44," filed and returned herewith.)

Mr. HOWE: Now, Mr. Hays, at this time we request Marie Carrau to produce her papers of naturalization.

Mr. HAYS: I will present these papers at the next hearing.

Mr. HOWE: That is all.

Mr. HAYS: We have no questions.

(Signature waived by the witness and by counsel for the respective parties.)

Mr. HOWE: We would like to see these letters of Mr. Collins from which you read the other day, at the opening of the testimony, the extract which you read.

Mr. HAYS: I will state to the examiner that the letter from Mr. Collins, from which I read extracts, relates to matters of a confidential nature, as communications between attorneys with reference to this litigation, and the defendant- at this time declines to exhibit the letter for the purpose of this hearing, but will produce the letter at the proper time before his honor, Judge Hanford, and if, upon his examination, the letter shall be deemed by him to be competent and not a privileged communication, we will submit to the order his honor may then make.

336 Mr. HOWE: In order that there may be no misunderstanding about the matter, and that I may not be put in a position for calling for a communication between counsel and client and between counsel associated together representing Marie Carrau, I would like Mr. Hays to inform me whether you decline to produce these letters on the ground that they are communications between counsel for Marie Carrau.

Mr. HAYS: The matter contained in the letter contains matters connected with attorney and client in such a matter as to preclude its introduction as I view the letter of the law, and for that reason I would produce the letter to the court for his judicial determination upon that question.

Mr. HOWE: Do you mean between Mr. Collins and Miss Carrou that the relation exists that you cannot produce it?

Mr. HAYS: I mean that there is in that letter reference to Miss Carrou's attorney, Mr. Donogon, as having said or done things which are privileged as between Mr. Donogon and Miss Carrou, and Mr. Collins, as the writer, is in the relation, in that confidential relation arising out of this communication so that it would be construed, I think, technically, as being a counsel legally acting for the time being in the case.

Mr. HOWE: For Miss Carrou?

Mr. HAYS: Yes.

Mr. HOWE: I will not call for the document. I do not desire to obtain confidential communications between counsel and client.

337 Mr. HAYS: While he has not communicated directly with Miss Carrou, to my knowledge, the contents in the communication are some of them privileged, surely under the rule of privileged communications.

Mr. HOWE: That is all that we have to-day.

At this time further proceedings were adjourned until Monday, January twenty-seventh, nineteen hundred and two, at 10 o'clock a. m.

SEATTLE, *Jan.* 27, 1902—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.

Present: Mr. James Howe, counsel for the complainant-. Mr. W. S. Howe, counsel for the defendant-.

Mr. HOWE: Complainants now offer in evidence a certified copy of the record admitting Marie Carrou one of the defendants in this case to citizenship of the United States.

(Paper marked Complainants' Exhibit "Y-45," filed and returned herewith.)

Mr. HOWE: Complainants also offer in evidence a certified copy of the decree appointing Terrence O'Brien, as administrator of the estate of John Sullivan.

(Paper marked Complainants' Exhibit "Y-46," filed and returned herewith.)

Mr. HOWE: We now offer in evidence the commission and testimony attached thereto taken in Ireland.

Mr. HAYS: I object to the offer of the evidence taken in Ireland and the commission as being incompetent, irrelevant, and
338 immaterial, and because it tends to incumber the record unnecessarily.

(Paper marked Complainants' Exhibit- "Y-47," "Y-48," "Y-49," and "Y-50," filed and returned herewith.)

Mr. TERENCE O'BRIEN, recalled on behalf the complainant-, testified as follows:

(Mr. HOWE:)

Q. Mr. O'Brien, please state whether the estate of John Sullivan, deceased, of which you are the administrator, is ready for distribution or not?

A. Yes, sir, it is; all claims are paid, ex——

Q. Except the mortgage?

A. Except the mortgage, yes. And I would like to state, however, that I was waiting for instructions from the court in regard to the erection of a monument, and I thought this would be a good place to state it. I thought it would interest you here.

Q. But as far as the debts are concerned, with exception of the mortgage, the estate is ready for distribution?

A. Yes, sir; all claims presented are paid, only the mortgage.

Q. Well, the year has elapsed since the publication of your notice to creditors?

A. Yes, sir, on the fifteenth of December, the year was up. The claims were paid on the seventeeth of December.

Q. Your last report to the court sets forth these facts, does it?

A. Yes, sir.

Q. Now, Mr. O'Brien, about when was it that you employed
339 Mr. Riddell as your attorney, about what date?

Mr. HAYS: I object to the question as being incompetent, irrelevant, and immaterial, and not tending to establish any issue in this case.

A. It was along somewhere the last of March; I could not state exactly the date.
Q. Of what year?
A. Nineteen hundred and one.

Mr. HOWE: That is all.
Mr. HAYS: No cross-examination.
(Signature of witness waived by the witness and solicitors for respective parties.)

Mr. HOWE: We have no date to set to take any more testimony; we may desire to take more testimony.
COURT: After the respondents close—is that your idea, Mr. Howe?
A. Yes; or should anything turn up that we may desire to put in, we will give formal notice of the taking of the testimony.
Mr. HAYS: I will ask your honor that the taking of testimony on the behalf of the defendant, Marie Carrou, be set for the third day of February, at ten o'clock in the morning.
Mr. HOWE: There is no objection to that.

340 At this time further proceedings were adjourned until February three, nineteen hundred and two, at ten o'clock a. m.

Defendants' Testimony.

SEATTLE, WN., *February* 3, 1902.

Present: The master in chancery. Mr. Howe, of counsel for complainants. Mr. Hays, counsel for defendants.

By agreement of counsel, the hearing set for this date on the part of the defendants was continued until February 10, 1902, at the hour of 10 o'clock a. m.

[Title of Court and Cause.]

Master's Report.

UNITED STATES OF AMERICA,
District and State of Washington, Ninth Judicial District, County of King. } *ss:*

I, Eben Smith, United States master in chancery and United States examiner and special commissioner appointed in this cause, do hereby certify that on the 18th day of January, 1902, appeared before me at my office, room 715, New York block, in the city of Seattle, King county, Washington, James B. Howe, Esq. (of Piles, Donworth & Howe), solicitor for complainants in the above-entitled

cause, and W. F. Hays, Esq., solicitor for Marie Carrau, de-
341 fendant in said cause, and thereupon the proceedings as appear in the first part of said record hereinbefore and throughout said record were instituted and R. H. Callihan, Miss Hermance Carrau, Miss Marie Carrau, Samuel Coombs, Mrs. A. Daussat, Mr. Louis Daussat, Mrs. E. H. Eames, J. C. Floyd, W. B. Jones, Daniel Kelleher, Terence O'Brien, James Park, Mrs. E. Seckler, Rev. A. Sweere, David Kellogg and N. S. Peterson, witnesses were produced for and on behalf of said defendant, and said witnesses were by me first carefully cautioned and duly sworn to testify the truth, the whole truth and nothing but the truth, relating to said above-entitled cause, and thereupon testified as follows:

FEBRUARY 10, 1902—10 a. m.

Before the master in chancery.

Present: The master, W. F. Hays, Esq. J. B. Howe, Esq.

Mr. HAYS: May it please the master in chancery, the defendant, Marie Carrau, appearing by her attorney W. F. Hays, of Hays, Houser & Robinson, further desire to urge the objection heretofore made to the jurisdiction of this Federal court to hear any of the matters in issue; upon the ground that the court is without any jurisdiction whatever in the premises; and

Second. The defendant objects to the reference of this case for the taking of testimony to a special commissioner, or other commis-
sioner, for the reason that under the issues in this case it
342 is cognizable alone by a jury, and cannot properly be referred for the purpose of taking testimony.

We give notice at this time that on Monday, the 17th instant, if not mutually agreed for that purpose sooner, the defendant will urge her position before the honorable court against the hearing of this case other than by a jury, and the further taking of testimony in the case. The defendant, however, for the purpose of the examination this morning of one witness upon the ground of his infirmity occasioned by age, will take his testimony for the purpose of using the same at the trial of this cause in the event that he cannot personally be present thereat, and for no other purpose.

Mr. HOWE: Counsel for complainants object to the examination of this witness except in the manner provided by the rules in equity. By cross-examining this witness, if they do cross-examine him, they do not appear in any proceeding to take the testimony of this witness *de bene esse*, or any other manner than in accordance with the rules in equity.

J. C. FLOYD, produced as a witness in behalf of the defendant Marie Carrau, being first duly cautioned and sworn, testifies as follows:

(Mr. HAYS:)

Q. Where and when were you born?

A. I was born in 1818 in the State of Maine, in a town called Surrey.

Q. You were born in the State of Maine?

343 A. Yes, sir.

Q. And what is and what has been the state of your general health up to the present time?

A. It has been very good except some of the epidemics I have had.

Q. Where do you reside?

A. In Seattle—do you want to know the street?

Q. Just locate the street?

A. I reside at 222 Fairview.

Q. Seattle, Washington?

A. Seattle.

Q. Are you a man of family?

A. Yes, sir.

Q. When did you remove from the State of Maine to Seattle or the Pacific coast?

A. 1849.

Q. State where you first located on the coast?

A. I first located in San Francisco.

Q. When?

A. 1850—late in '50; in the fall I went to the mines.

Q. When and under what circumstances did you come to the State of Washington?

A. Well, without any solicitation whatever I got an appointment as lightkeeper at Cape Flattery.

Q. By the Government?

A. By an old friend of mine who happened to be collector of the port.

Q. At where?

A. Eh?

Q. Collector of what port?

A. Puget sound.

Q. What was his name?

A. Gunn; Doctor Gunn—I think it was L. C. Gunn; I don't remember exactly what his initials were.

344 Q. Were you acquainted with the deceased John Sullivan?

A. Yes, sir.

Q. When did you first become acquainted with him?

A. I met him in 1864 at the lighthouse at Cape Flattery; when I arrived there he was one of the assistants.

Q. Was he at that time working there as an assistant?

A. Yes, he was one of the assistants.

Q. State the extent of your acquaintance then and since?

A. Well, I took quite an interest in him after becoming acquainted with him; we became very warm friends and I was acquainted and familiar with him and from that time up until within a few days of his death; that was the 17th day of May, 1850, I think—it was in May, anyway—1864, I mean.

Q. 1864?

A. I don't recall the exact day.

Q. Did he continue in his employment at the lighthouse after you took charge?

A. Oh, he still remained there as one of the assistants from the Government.

Q. How long?

A. Four years.

Q. What was the occasion of his ceasing his employment there, if you know?

A. He was cast away—capsized on a schooner——

Q. You don't understand what I am asking you—I asked you what was the occasion of his ceasing his employment at the light-house?

345 A. Ceasing his employment?

Q. Yes.

A. Well, I had occasion—I took a notion to resign myself, and I had agreed with certain parties that I would resign at a certain time and I didn't see how I could help it—well, I told him some time before that that I would resign—I finally came to the conclusion I would resign and my resignation to take effect on the first day of July, 1868. I wrote—I went to my room and wrote my resignation and brought it down and put it on the mantle-piece, and he asked me what it was and I said that was *was* my resignation.

Q. Who asked you?

A. Sullivan asked me what it was and I told him it was my resignation, to take effect on the first day of July; and he said, "If you are going to quit, so am I"—but I didn't think anything of it and until he came down stairs and sticks up an envelope alongside of mine and I said, "What is that?" and he said, "That is my resignation." Well, I tried to persuade him not to resign and I told him it was wrong; I said, "You had better tear that up."

Mr. HOWE: Counsel for complainants objects to the conversations between the witness and John Sullivan, on the ground that they are irrelevant, immaterial and incompetent.

Mr. HAYS: Go ahead, Captain.

346 A. (Continuing:) He said, "You tear up yours and I will tear up mine;" and I said, "That don't make any odds—I have agreed to resign, and I have got to in order that I may keep my word." Well, he said "If you don't tear up yours I shan't. You remain here and I will. If you go away I won't have another

man boss me; I will go." That was about the occasion of his leaving.

Q. Where did you then go?

A. We went to Port Townsend and remained there a few days and then went to Victoria.

Q. Did Sullivan go with you?

A. He kept with me all the time.

Q. Then where did you go?

A. We then went aboard the steamer for San Francisco. Well, we went to Astoria and from Astoria to San Francisco—the steamers used to touch at Astoria at that time.

Q. What relationship, if any, did Mr. Sullivan have, or tell you that he had, since you became acquainted with him?

Mr. HOWE: I object to that as irrelevant, immaterial, incompetent and leading.

A. He told me—we were frequently speaking about Ireland and his going there, and he told me he had no relatives in Ireland. He said he had one brother, and I am pretty sure he told me his brother was older than him—I am positive of it—but he was lost at sea; he went to Australia and discharged the ship and went
347 to sea again and they never were heard of, neither the ship or any of the crew—that was what he told me.

Q. When did you next meet Mr. Sullivan after your trip to San Francisco, and where?

A. I met him here in Seattle; he was then keeping a little store.

Q. When?

A. I don't recollect; it must have been two or three years afterwards; about two years I reckon.

Q. Then it would be sometime in the '70's or about 1870.

A. Yes; I think it was '72 or '73.

Q. Now, Captain, how intimately acquainted were you with Sullivan after you met him in Seattle, if you were acquainted with him?

A. Well, I considered him one of my best friends, and he always appeared to me as though he considered me the same.

Q. What business relation, if any, did you have with him?

A. I never had much business relation with him except trading with him occasionally and I loaned him some money once.

Q. Under what circumstances? Tell the facts.

Mr. HOWE: I object to that as immaterial, irrelevant and incompetent.

A. Well, I had loaned the money in Seattle and it was due, and I was in Seattle, and the man paid me the money over, and
348 it happened that I mentioned it to Sullivan. I always called on him whenever I was in town. I happened to tell him the circumstances and I was wondering what I would do with it. Well,

he said he would take it—he was then just moving an old building off his lot down here.

Q. Where the present block now stands?

A. Yes; and going to put up a larger one; there was a dwelling-house on it then and he moved it back and he was putting up a larger one, and he needed a little more money, and I loaned him the money and he said he would take it and I let him have it.

Q. What was said, if anything, in regard to what security was given.

Mr. Howe: Object to that as irrelevant, immaterial and incompetent.

A. He wanted to know what security I wanted. I told him I did not want any security from him. Well, he made the remark that that was business and he said, "If I was loaning money I would want security—something might happen to me—that it was well enough—and I think he gave me security on the lot—I am pretty sure he did.

Q. A mortgage?

A. A mortgage on the lot and house. I never charged my mind with it afterwards very much. I recollect very well that he paid me back the money before it was due. I didn't want to take
349 it, but he paid it back—he said he didn't need it any longer, and being a friend I took it from him before it was due, although I would rather he would have kept it and I would get the interest, but out of friendship I took the money back.

Q. How frequently did you see him after this transaction, if you saw him, up to the time of his death?

A. I saw him very often; sometimes I would see him two or three times a week and perhaps sometimes I would not see him for a month—maybe there was times it has been three or four months that I would not see him, but I always, when he was in business, always called on him, and after he had put up the brick block, he had an office in the back part of it and I generally called on him when I came into town—I used to live up there in North Seattle and always called on him.

Q. What conversation, if any, did you have with him about the time of his death, or previous to his death, if you had any.

Mr. Howe: I object to that as irrelevant, immaterial and incompetent.

A. Well, I was in town, I think it was not a great while before he died—I don't think it was over ten days. I went to see him and I met him in the hallway and he appeared more cheerful than I had ever seen him. He was generally rather sedate, but he was very cheerful and dressed more fashionably than I had ever seen him, and so much so that I made some remark—some joking re-
350 mark—and he says, "Well," he says, "I have just got out of a hole now and I have got so that I can spend some money

for myself and I am going to change my entire mode of living;" and we talked along in the hall and he had something to do with somebody there, and he finished the conversation with that and we walked around into his office and we talked about old times. I could not say what he did say or didn't say, and just as I was leaving he told me, however, that he had just returned from France and had been to the World's Fair—I forgot that part of it—and he was going back again, and in the conversation, I think after we got in the room, he said that he was going back to France and stay there the winter, and, if I recollect right, he said he was going to return in March, and he says, as I was leaving the office he says—just as I was shutting the door—he said, "By the way," he said, "I expect to have a home of my own when I get back and I want you to come and see me." That was the last words ever Sullivan spoke to me, the last time ever I saw him. I went from his place down to Doctor Whitworth's office and I told Whitworth how Sullivan was going to France to spend the winter; and I went back home and some time afterwards I saw Doctor Whitworth—I don't know how long it was—I don't think it was over ten days, though, and he said to me "Sullivan is not going to France."

Q. Who said this?

A. Doctor Whitworth.

351 Mr. HOWE: We object to the conversation between the witness and Doctor Whitworth as irrelevant, immaterial, and incompetent.

Q. You met Doctor Whitworth?

A. I went to his office.

Q. And then Doctor Whitworth, on the second meeting, stated to you, did he——

A. —That Sullivan was not going to France. I asked him why. "Why," he said, "he is dead." That was the first I heard of his death. I did not happen to be taking a paper, and that was the first I heard of his death. I don't think it was over ten days after I had the conversation with him.

Cross-examination.

(Mr. HOWE:)

Q. Captain, how long have you been living in Seattle?

A. I have been living in Seattle twenty-two years.

Q. In the city?

A. Yes, sir.

Q. In North Seattle?

A. I lived there most of the time. I first located up here Fifth street—well, I hired a house there and then afterwards I bought a place on West and Blanchard and lived there eight or ten years.

Q. You and Sullivan went to San Francisco together after your resignation?

A. Yes.

Q. What year was that?

A. That was '68.

Q. And that was the time that Sullivan told you that he had no relatives in Ireland.

352 A. He had told me that he had no relatives and that time I asked him where he was going. All this time we were together I didn't know where he was going, and I said, "John, where are you going—going back to Ireland?" and he said "No; I got no friends in Ireland;" that was the very remark he made—"I told you repeatedly I had no friends in Ireland."

Q. Was that on the trip down to Frisco?

A. Yes.

Q. Now, Captain, how often did you come into town?

A. How often do I come to town?

Q. Yes, how often did you come into town?

A. Sometimes I would be a month or two, or perhaps two months; sometimes I would be busy perhaps and I couldn't.

Q. How much money was it you loaned to John Sullivan?

A. Well, sir, I could not remember the exact amount; I know it was seven hundred dollars that I loaned to a gentleman here and I came into town and he paid me the money, but I know I had some more money.

Q. It was about seven hundred dollars?

A. It strikes me that he had eleven hundred; but I knew it was seven hundred or more.

Q. Now, what business have you been engaged in for the last fifteen or twenty years?

A. Well, let me see. I have not been engaged in much of anything, only odd jobs; sometimes I have been keeper of ships,

353 and I have been janitor of the city hall for a year and fireman there, and one thing and another, and then a little of everything.

Q. Now, Captain, where was the lighthouse that you and Sullivan worked in?

A. It was at Cape Flattery, on Tatoosh island.

Q. And it was when you were living on the island and when you were going down to Frisco that he told you that he had no relatives?

A. Yes.

Q. In Ireland?

A. Yes.

Q. Or anywhere, was it?

A. He said, "You know I have told you repeatedly that I have no friends in Ireland," he said; "I am an American now."

Q. Did he tell you he had no relatives in Ireland?

A. He told me previous to that he had no relatives—he said he had one brother and he was lost at sea, and I understood him to say that his father and mother were dead.

Q. That was when you were living on the island?
A. That was when we were together in the island.
Q. That was from 1864 to 1868.
A. Yes, sir.

Redirect examination.

(Mr. HAYS:)

Q. Captain, was your attention ever before called to the fact of the conversation you have related concerning Mr. Sullivan's relatives before the death of Mr. Sullivan?

354 Mr. HOWE: I object to that as as irrelevant, immaterial, incompetent, and leading.

A. I don't believe I understand your question.

(Mr. HAYS:)

Q. Was your attention ever before called to the fact of the conversation you have related concerning Mr. Sullivan's relatives, so as to fix the dates as to when that conversation was had with Mr. Sullivan, before his death?

A. I don't recollect my attention was ever called before his death particularly, though it may have been.

Q. As a matter of fact, this conversation you had concerning Mr. Sullivan's relatives, or having any relatives, and about his parents both being dead and his brother lost at sea—it might have occurred while you were at the lighthouse, part of it, and a part of it might have occurred much later.

Mr. HOWE: I object to that on the ground that it is leading and being entirely the statement of counsel.

A. Well, really, I could not say whether my attention was particularly called to it or not.

Q. You simply have a distinct recollection that sometime during Mr. Sullivan's life, he told you he had no relatives and that his parents were both dead.

Mr. HOWE: I object to that as leading.

A. Yes, sir. He told me that, I think, more than once in the conversations we had at the lighthouse.

Q. Well, did he ever tell you that in Seattle?

355 Mr. HOWE: I object to that as leading, as the witness has already testified in regard to that.

A. Well, I don't recollect that he did.

(Mr. HAYS:)

Q. Captain, is your memory not more distinct covering the years

of 1864 to 1878, and incidents that occurred then than it would be twenty years later?

Mr. HOWE: I object to that as leading, and also on the ground that the witness has not mentioned the year 1878.

A. Well, my memory was much better then than it is now—I don't know that I understand the question exactly.

(Mr. HAYS:)

Q. Might it not be possible that what you remember as having occurred in the past and which you date as having happened, we will say, between 1864 and 1868, that in the recording of these incidents in your memory that might have occurred much later?

Mr. HOWE: Object to that as leading.

Q. Oh, they might.

(Mr. HAYS:)

Q. But you are testifying as a faithful, truthful witness, from your memory, as it strikes you now.

Mr. HOWE: Object to that as leading.

A. Yes, sir.

Recross-examination.

(Mr. HOWE:)

356 Q. Captain, haven't you observed that as a man grows older his memory is very much better as to what happened many years ago than as to what happened at a recent date?

A. Do I understand you to ask me if he don't remember things that happened many years ago?

Q. —Better than things that happened of recent date.

A. Yes, of course he does; I can remember—dropping this conversation—I can remember the names of all the people that I knew in the town where I lived, and can call them off as though I was reading them, and I can't remember names that I learned yesterday.

Q. Now, you are clear in your own mind, are you not, that when Sullivan told you he had no relatives in Ireland that was when you lived on Tatoosh island.

A. Yes, sir.

Q. And when you went on the trip to Frisco?

A. Yes, sir.

Redirect examination.

(Mr. HAYS:)

Q. If, Captain, you should be told that as a matter of fact that John Sullivan's father and mother were both then living, and he had two sisters living, but that since then they have all died, would it not be a circumstance to shake your faith as to the date of the conversation you have related with Mr. Sullivan?

Mr. HOWE: Object to that as leading and being cross-examination of his own witness.

A. Oh, yes, it is barely possible.

357 (Mr. HAYS:)

Q. Did you look upon and know Mr. Sullivan, from your personal observation and experience, as a truthful man.

Mr. HOWE: We object to that as irrelevant, immaterial, and incompetent.

A. I considered him one of the most truthful men I ever was acquainted with, and I would take his word for anything.

Q. Then, if he told you, between 1864 and 1868 that his father and mother were both dead, when in fact they were both living, and he knew it, would it not change your memory, and make you conclude that you were mistaken as to the date of this conversation with Mr. Sullivan?

Mr. HOWE: I object to that as leading.

A. I don't know about that—I would take his word for anything.

Mr. HAYS: That is all I want to ask this witness; but before proceeding further with the hearing before the commissioner, the defendant desires to be instructed further by the court as to her right to a jury trial, and for that purpose we will ask that the matter be continued until such time, under the rule, such instruction can be obtained.

J. C. FLOYD.

Further hearing adjourned until Tuesday the 18th day of February, at 10 a. m.

[SEAL.]

——— ———,
U. S. Master in Chancery.

358 FEBRUARY 15, 1902.

On this 15th day of February, at the hour of 2.45 p. m., appeared before the special examiner, James B. Howe, Esq., one of the solicitors of the complainant, and W. F. Hays, Esq., one of the solicitors of Marie Carrau, respondent, also appeared J. C. Floyd, the witness

whose testimony was given at the last hearing, for the purpose of having the same read over to the said witness and by him signed, whereupon the examiner reads the direct examination to the witness.

Mr. HAYS: Remember, Captain, now this is the cross-examination by Mr. Howe.

(Whereupon the special examiner reads the remainder of the testimony of said witness to said witness.)

SPECIAL EXAMINER: Anything to be added to that?

Mr. HOWE: That is correct as I recollect it.

Mr. HAYS: That was his testimony as I recollect it.

SPECIAL EXAMINER: Now, Captain, you write your name there.

Mr. HAYS: Now, Captain, is there any explanation or correction which you want to make?

(By the WITNESS:)

A. There is a possibility that I might have been in error. I recollect—which I did not state here—one time being in his store; that was about '77 or '8, and an insurance agent came in and he wanted to insure him and he told him he did not want him to insure him, and he went on and made a statement of what
359 an advantage it would be for him; that he would be able to insure for a hundred thousand dollars, "And then when you die you can turn it over to your friends." He said, smilingly, he says, "What bothers me more than anything else — to know what I will do with my money when I do die; I have got no friends to leave it to." And after this man went out he told me he had had some communication from Ireland with regard to the death of his father and mother. Well, now, it is barely possible that I might have been mistaken in his saying that his father and mother was dead at the lighthouse; it might have been at that time he told me, but I could not say; I know that he said he had been having a communication from Ireland in regard to the death of his father and mother. This was somewhere from 1877 to '78—I think it was in '77.

Q. Do you wish this last statement of yours incorporated in your deposition?

A. What say?

Q. Do you wish this last statement and explanation which you have made to be incorporated in your present deposition?

A. Why, yes, sir.

Q. Have you any further statement with reference to Mr. Sullivan?

A. Well, I don't think of anything now.

Q. —Which you wish to make?

A. I have an idea that I might think of something sometimes and then I forget it again.

360 Cross-examination.

(Mr. Howe:)

Q. Now, Captain, you remember when you testified here the last time, do you?

A. Yes, sir.

Q. You remember being very positive that the conversation between you and John Sullivan in which he told you that he had no friends in Ireland and no relatives, took place when you were working together in the lighthouse service on Tatoosh island.

Q. Yes, I remember that.

Q. Yes——

A. And still——

Q. You remember that?

A. I remember testifying to that; yes, sir.

Q. You were very positive at that time that that conversation took place when you were in the lighthouse service on Tatoosh island, were you not?

A. Yes, and after I got home, and even after I had gone to bed, I was ruminating over that, and this circumstance came to me. I did not recollect it at the time, in regard to the insurance agent and in regard to the remark that he made to the insurance man, and then his saying his having a communication from Ireland with regard to the death of his father and mother. Well now, I wondered if I did not have that confused, and still it appeared to me that I did not; but I know very well I did not—I would not say positively one way or the other.

361 Q. Well, would you say now when you and Sullivan were on Tatoosh island in the service of the Government prior to 1868, Sullivan did not tell you that he had no relatives and friends in Ireland.

A. I think he told me he had no friends in Ireland; I know he said on the steamer when I asked him if he was going back to Ireland he said, "I have no friends in Ireland; I am an American now."

Q. Did he say, "no relatives in Ireland" or "no friends in Ireland."

A. No, sir; he said, "no relatives there."

Q. Didn't you testify before that it was on the way to Frisco he told you he had no relatives in Ireland?

A. I don't think I did; if I did I was wrong, because I remember very distinctly he said he had no friends.

Q. Didn't he tell you when both of you worked on Tatoosh island that he had no relatives in Ireland?

A. Well, it struck me that he did.

Q. Now, since giving your testimony here have you talked this matter over with Mr. Hays at all?

A. I have not seen Mr. Hays again until to-day.

Q. How was it, then, that it suddenly occurred to you to recollect this conversation which you say took place about '78?

A. About the insurance man?

Q. Yes.

A. Well, I hardly know.

Q. Do you mean, Captain, that you and Mr. Hays, after
362 you left here when you gave your testimony the last time, had no conversation in regard to the statements of Sullivan to you.

A. Oh, we had some conversation in regard to it; of course we had.

Q. I mean since you gave your testimony here the last time?

A. Yes; the thing has been mentioned—my testimony—and he remarked to me that if I had made any mistakes or thought of anything, that I had the right to correct it.

Q. Well, the last time you gave your testimony you were very positive as to when these statements of Sullivan to you took place.

A. At the same time you might say——

Q. You were very positive, were you not?

A. Yes.

Q. And now you want it understood that you do not know whether the conversation took place in 1868 or in 1878.

A. Well, it is still impressed on my mind that what he said on the steamer is so. I don't think I can change that anyway.

Q. Well, how about what he said on Tatoosh island?

A. Well, about what he said at that—I could not be positive about that.

Q. Now, Captain, is it not true that Mr. Hays explained to you that you had testified that Sullivan stated to you that he had
363 no relatives in Ireland at a time when he did in fact have relatives in Ireland, and is not that the reason for changing your testimony?

A. No, sir; that is not the reason I changed my testimony. The reason I changed my testimony is what I told you in the first place, that I thought it over after I got home, and after even I was in bed, and this circumstance occurred to me with regard to the conversation he had about the communication in regard to his parents.

Q. Now, in this conversation he had with you when the insurance man tried to get him to take out insurance, did he tell you when his parents died?

A. No, I don't really remember. I don't remember any further than this, that he said he had been having a communication with regard to the death of his parents, and I don't know what else he said or what he didn't say, as far as that is concerned; that is as far as I remember the conversation.

Q. And it was at that time, then, that he again said that he had no relatives in Ireland, was it?

A. No; I don't remember that he said anything about it at that time; I don't remember whether he did or not.

Q. You don't remember whether at that time——

A. Whether he did or not. I recollect his saying he had a communication with regard to the death of his parents, and that is all I remember.

Q. You do not remember at that time whether he said he had no relatives in Ireland?

A. No, sir; I do not remember whether he did or not.

364 Redirect examination.

(Mr. HAYS:)

Q. Captain, was this the same time that the insurance man was talking with him about insurance which you testified about in answer to Mr. Howe's last question?

A. Yes; I think it was.

Q. Then he did say something to you about his relatives, didn't he?

Mr. HOWE: I object to that as leading.

A. How's that.

(Mr. HAYS:)

Q. You have been a little confused in the time that Mr. Howe has directed your attention to; you have answered Mr. Howe to his question whether Sullivan told you he had no relatives in Ireland, that he did not tell you at that time. Now you mean, in that particular conversation, do you not?

A. Yes, sir.

Mr. HOWE: Now——

A. (Interrupting.) I don't know whether—I don't know whether I understand your question or not—but I don't remember whether he said he had or had not any relatives in Ireland at that time—whether he did or not—I would not like to swear that he did or that he did not.

(Mr. HOWE:)

Q. Then Captain, I understand you to mean that you do not know whether Sullivan told you about the time that this insurance agent visited him——

365 A. (Interrupting.) No, sir; I don't know for certain.

Q. (Continuing:) That he had or had not relatives in Ireland.

A. I could not swear to a certainty——

Q. You would know if he said he did not have.

A. (Continuing:) That he did or did not.

Q. That conversation, Captain, took place in 1878.

A. It was either '77—the latter part of '77 or the first part of '78.

Q. Do you remember the name of the insurance agent?

A. No, I do not.

Q. Do you remember what company he represented?

A. I think he represented the Ætna Company; I would not be certain of that even—but most of the life insurance men did.

(Mr. HAYS:)

Q. You are positive that at the time of the conversation with the agent Sullivan stated in your hearing to the agent that he had not any relatives to leave his money to?

Mr. HOWE: I object to that as leading.

A. Yes, he told me he had nobody to leave his money to. "What bothers me"—well, I will tell you the very words he said. When the agent got through he said, "What bothers me more to know what the devil I will do with my money when I do die." He said, "I have got nobody to leave the money to."

(Mr. HOWE:)

366 Q. Now, Captain, did you mean to answer Mr. Hays' last question that Mr. Sullivan said to the agent at that time that he had no relatives in Ireland?

A. I don't recollect whether he said anything about relatives or what not. He said, "I have nobody to leave my money to. I don't know what the devil I will do with my money when I die. I have nobody to leave it to."

Q. The word "relatives" was not mentioned.

A. I don't know whether it was or not; it may be and it may not.

Q. Now, if, as a matter of fact, at that time Sullivan had a sister living, then might you not be mistaken as to what Sullivan said to the agent?

A. I think not.

Q. Then do you think that Sullivan, whom you say was a truthful man, was telling the agent a lie?

A. No, I don't think he was telling a lie.

Q. Then if, as a matter of fact, Sullivan did have a sister living in '78 in Ireland and he knew that he had that sister living at that time——

A. This was in '78.

Q. I say '78—then you must have been mistaken as to the date of that conversation, is that not so, or else you must have misunderstood the conversation.

A. Well, I may be mistaken in regard to the date we had the conversation, but I know it was along about that time; about the time I moved into town, and I moved into town in 1878.

367 Q. I say, if, as a matter of fact, Sullivan did have a sister living in 1878 and up to 1879, then you must have been mistaken as to what he told that agent, must you not?

A. Yes, I might be mistaken in the date. It was about the time

that I moved in town; it might have been a year or two afterwards, or it might have been the same year.

Q. It could not have been later than 1880, could it?

A. It was as late as '78.

Q. It was in the '70's?

A. I think so.

Q. It could not have been later than 1880?

A. I could not swear whether it would or not; I could not give the dates. I moved in town in '78, and I think this conversation took place—I know it took place afterwards and——

Q. Well, could it have been as late as 1884?

A. (Continuing:) It might have been still later for what I know—I did not keep a record of the dates exactly, and the only way I know is about the time I moved in town, and this was after that.

Q. How long after that?

A. I could not say.

Q. Well, how many years about?

A. Well, it might have been a year or it might have been two years and it might not have been—it might have been just at that time for what I know; I don't remember.

368 Q. Now, fix the date when you did move in town.

A. I moved into town in '78.

Q. Then this conversation with the insurance agent could not possibly have been later than 1881, could it?

A. No, I don't know.

Q. You say you moved in town in '78?

A. Yes, sir.

Q. You say this conversation took place, then, within one or two years after you moved in town, didn't it?

A. I cannot remember, sir; and I don't think any man could remember a circumstance of that kind where he never expected to call it to mind again, whether it was six months or two years afterwards.

Q. And yet you can remember the very words that Sullivan said.

A. Yes, because it was so curious when he smilingly—he was laughing when the agent was telling him all the advantages——

Q. It might have been that he just wanted to turn the agent off.

A. I don't know about that.

Q. It might have been?

A. Yes, I don't know about that.

J. C. FLOYD,

——— ———,

[SEAL.] *U. S. Master in Chancery.*

369 Read over to the witness by me, and by him subscribed in my presence, and sworn to on this 21st day of February, A. D. 1902.

EBEN SMITH,
U. S. Master in Chancery and Examiner,
Special Commissioner.

TUESDAY, *February* 18, 1902—10 a. m.

Continuation of proceedings pursuant to adjournment.

Present: The examiner. J. B. Howe, solicitor for complainant-. W. F. Hays, solicitor for defendant-.

By agreement, the hearing is further adjourned until 1:30.

1:30 P. M., FEBRUARY 18, 1902.

Present: The examiner. J. B. Howe, John E. Wright and Farrell, counsel for complainant-; and W. F. Hays, counsel for defendant-.

SAMUEL F. COOMBS, produced as a witness in behalf of defendant-being first duly cautioned and sworn, testified as follows:

(Mr. HAYS:)

Q. State your name.

A. Samuel F. Coombs.

Q. Where were you born and when?

370 A. I was born in South Thomas, Maine, on the 16th of April, '31.

Q. Where do you reside?

A. My residence is 402 Eleventh avenue, north.

Q. New York city?

A. Seattle, Washington.

Q. You see we want to locate your home in this State.

A. All right.

Q. How long have you lived in the State of Washington?

A. Well, in this State—in this Territory—it was not a State then—I came here in '59, the fall of '59—the latter part of '59.

Q. Were you acquainted with the late John Sullivan, deceased?

A. I was.

Q. How long had you known him?

A. Since he arrived in Seattle.

Q. When?

A. Well, I don't remember the year, I never thought of that; it has been twenty-five or thirty years ago.

Q. How intimately did you know him?

A. Well, as a citizen doing business here and a merchant; the first that I knew him that he had a stock of cigars and notions that came from Wells, Fargo & Company's express when I was agent.

Q. You were agent for what?

A. Wells, Fargo & Company's express.

Q. About when was that?

A. I don't remember the year, but it was when he first

371 came here; I never thought of the year; it must have been twenty-five or thirty years ago or more than that even—twenty-five at least.

Q. During his stay and your residence in Seattle did you frequently meet him?

A. Most every day.

Q. How late did you meet him previous to his death?

A. About eight or nine days before—eight or nine days, that was the last time.

Q. That you saw him?

A. I saw him on the street.

Q. State under what circumstances you met him the last few meetings you had with him.

A. I should think about, perhaps two weeks before the last meeting I met him for the first time on Seventh street. I was living on Ninth then. I had to go up Madison street or up Pike; as often as I would go up Pike street as I did up Madison—I would walk up Pike street and I might have some business that way, and I would walk up Seventh to my house on Ninth, from the one that Robert Denny had at the top of the hill there—I lived in the Waterhouse—Frank Waterhouse—but I rented that house for four or five or six months. I often went—occasionally went up Pike street—well, I guess about once or twice a week I would go up Pike street, and the rest of the time I would go up Madison street.

Q. Go ahead.

A. And that is the first time, about two weeks before I saw
372 him last—I had just got off the car at Pike street; it was then a little after dusk, I think some time in September, I think soon after I came here; I think it was perhaps two weeks——

Q. After you came here?

A. After I came over from West Seattle.

Q. Oh, yes.

A. We had not been living in the house but a short time, and I got off the car and he did, on Seventh. We started in and I caught up with him and I said, "Well, John, how's this? You seem to be getting off your haunts." "Oh, yes," he said, "I domicile right here, right ahead," he said, "this is my home," or something like that, and at that time I did not stop and talk with him much, but I saw a light; he pointed up to the window. The house—I think there is three tenement houses all in one group—and I think we were in the first one and he pointed up and he said, "That is my home where I am stopping" I said, "That is funny, an old bachelor like you getting off up here."

Mr. HOWE: Complainants object to the statement of conversations between Sullivan and the witness as irrelevant, incompetent and immaterial.

Mr. HAYS: Go ahead—well, the court will instruct the witness.

The EXAMINER: Well, go ahead Mr. Coombs.

A. Well, at that time I did not stop and ask him, but I went on—my dinner was waiting for me and I was behind a couple of

hours. I didn't stop and talk with him very long at that
373 time, and the next time that I met him was—I think it was right or ten days before that I saw him last—that was the time I saw him last, remember—and it was at least eight or ten days after that meeting that I read in the paper of his death. Still at that time we met as usual and we talked a good deal longer. We stopped in front of the house and we had quite a conversation and he said, "I am very happy to——"

Q. In front of which house?

A. Of this house in Seventh street, about half way of the block up to—the next was Union—half way between Pike street and Union street, and we stopped there and conversed and he told me——

Mr. Howe: I make the same objection to any conversation he had at that time.

The Examiner: Talk a little louder, Mr. Coombs, so that the reporter can hear you,

A. Well, I was strongly impressed——

Mr. Hays: Go on and tell what he told you.

A. He told me that he was located here and this was his home and that he was taking French lessons or had been—I understood that he was or had been, and he said he was going to leave about the first of October for France and to spend that winter there—that was '90 or '91— in France, and "I was very much pleased with my visit; it seemed that it added to my life ten years;" and I found him to be very buoyant, something so unusual for John Sullivan, because he was a very reticent and rather reckless, and it impressed me very queer that John should take that way in regard to his habits and——

374 The Examiner: You are getting down to a low tone of voice again—will you talk a little louder?

A. Well, Mr. Sullivan, at that time, was standing there talking and I told him this: I said, "I have got to go along and go to dinner and I am glad to find you so pleasantly located." I went along home and my folks rather rebuked me for not being on time, and I told them that I met my old friend Sullivan down there and, "What do you suppose he told me——"

The Examiner: Can you hear the witness, Mr. Howe?

Mr. Howe: Yes.

(By the Witness, continuing:)

A. I said, "He told me he got a home," and I said, "I guess he bought some property down there," and so I didn't think anything more of it at that time until I was taken sick—I was taken sick on about three weeks after that. I was sick with a heart trouble that has been troubling me ever since I have been here, forty-odd years, and I had to give up. This was, mind you, a long time after Sullivan had been dead, and by the time I saw the newspaper article I

had forgotten all about it. I knew that Terrence O'Brien had been appointed at that time and I knew Mr. Donworth, a friend of mine was one of the—one of O'Brien's friends or attorneys; and I took a great interest in O'Brien and in the appointment; and this article—the paper was brought to my bedside——

Mr. HOWE: I object to this as incompetent, irrelevant, and immaterial.

375 Mr. HAYS: Go on.

A. (Continuing:) Sunday morning paper, I think it was—anyway it was the morning paper was brought to me and they said "Here—here is an explanation in regard to that will of Sullivan's" and said I, "What is it—what can it be?" Well, they read it to me and it was just about his nuncupative will, something that I really didn't understand that, but this little Carrau girl, this French girl, was made the beneficiary. "Well," they said, "that rather agrees with your prediction that somebody on Seventh street would be a beneficiary of that will if he ever made one." "Well, yes," I said, "that is so; I did say that."

Mr. HOWE: We move to strike out the statement of the witness as to the details of this conversation between the witness and some other person, that other person not being John Sullivan, on the ground that the testimony is irrelevant, immaterial, and incompetent.

Mr. HAYS: Go ahead.

A. Well, I told them to telephone to either Donworth or O'Brien. "See if you can find O'Brien." Well, he could not find O'Brien, so I told them I would like to have a conversation with Captain Burns or perhaps Donworth. I saw where the paper said "A local attorney was appointed—was her attorney—a local lawyer here in town, W. F. Hays. I knew of Mr. Hays; at any rate I telephoned either to Captain Burns or Mr. Donworth, I don't know which, asking
376 them about it, and I telephoned to Piles, Donworth & Howe, and told them—I asked for Donworth and they said "No, he was sick," and they told me what his number was, and then I telephoned that to Mr. Donworth—we could not call him up, his line was out of order or something—and then I think I telephoned to Captain Burns, and I told him what my impression was and if it would be—as I was very much impressed with the statement I had read in the paper that morning. Well, he says to me——

Mr. HOWE: All of this is objected to as mere hearsay and incompetent, irrelevant and immaterial.

A. Well, never mind—I could not get any response from Mr. Donworth and I talked with Captain Hays.

Q. Captain Hays.

A. I did and I got a response from——

Q. Hays?

A. Captain Burns, excuse me. Captain Burns said——

Mr. HAYS: If you mean me, I want you to call me a higher title than "Captain."

(By the WITNESS:)

A. Captain Burns said, "Well, Mr. Coombs, I don't care to mix up with it," and he seemed to be kind of crusty about my telephoning him. I said, "Now, Captain——"

Q. Are you talking about Captain Hays or Captain Burns now?

A. Captain Burns. He said, "I don't care to be mixed up with it." "Well," says I, "I only want to know if any information I wish to give I think it might help Terence O'Brien or Mr. Donworth, or whoever it would be proper, as I was very sick and I was going to make a statement, which I did then, or prepared to do." I got my niece—Miss Ida Coombs——

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Mr. HOWE: I want to enter a general objection; I object here to the witness' testifying to what he did and as to those conversations with various parties on the ground that they are irrelevant, immaterial, incompetent and hearsay, and I do this to avoid having to enter an objection to each question.

A. I will tell you what I did right then.

(Mr. HAYS:)

Q. Before proceeding further, you have stated that you telephoned at the time you were sick and in bed as I understood you. Now, was that you that was telephoning, or was it some one for you?

A. The first telephone was by my request and the last one—the one to Mr. Donworth before that—before they called him up, I think, was some member of the family. I am not certain about that.

Q. But at this time that you are detailing, you were sick in bed?

A. Sick in bed.

Q. And unable to be up at all?

A. Unable to be up.

Q. Now, go ahead and tell what you did.

A. Well, I think that I telephoned to Captain——

Q. Now, tell without thinking.

A. Well, I know that I went to the telephone for Captain Burns—they went and I think that they didn't do it properly, and I got up and went—Captain Burns—I remember I had a conversation with him myself—the others, I am inclined to think some other members of the family called up for me—then I called my niece to get a pencil and paper, something like you have got there, which I did—a school children's blotter—and I told her to write down what I was going to say, and it was very near what I am now relating, very near it—and she did—she took my evidence down; and during that day I then telephoned down to Mr. Hays, I

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think, I am not certain, but I think I telephoned to him—I am pretty sure I did, seeing that you were——

Mr. HOWE: We object to this statement on the ground that it is incompetent, irrelevant and immaterial.

Mr. HAYS: Go ahead.

A. The article in the newspaper was—well, the article in the newspaper—seeing that I could not get Mr. O'Brien or Mr. Donworth, whom I knew well—the other members of the firm I was not so well acquainted with—and I telephoned down to Mr. Hays and I told him that I had made a statement, that my niece had written it down, and if he had a mind to send up a typewriter or someone that I could trust to have it type-written, which he did. And that statement was something similar to what—as near as I can get at it
or remember—something to what I already related. And
379 I—in about a week—I think the paper itself would prove
that—but I don't care anything about that. Well, I think it was about a week afterwards I got quite smart and I had the type-written business sent up to me and I corrected it in ink where there was any errors that I thought should be straightened out, which I did, and I held it until I was able to go down—to come down town myself; I was getting better, and I went right in here and I submitted it, I think, to Mr. Hays on the way, and I went up to Mr. Peterson here on the next floor, the secretary of our St. John's Lodge—I knew he was a notary public—I knew him well—I went there and got him to swear me to it.

Q. What conversation, if any, did you have with the attorney Donworth, whom you have spoken of concerning this matter?

A. Now, after I got out I thought I would go up and have a little talk with Mr. Donworth about it, which I did. I told him some-, thing—something here—what I said here as near as can get, or judge rather—it was in the office, anyway, of Piles, Donworth & Howe.

Q. Did you have any conversation concerning this which you have testified about with the administrator, Terence O'Brien?

Mr. HOWE: I object to that as irrelevant, immaterial and incompetent.

A. Now, I am not certain. I have had conversations with
380 him, but not, I don't think, right off quick after that, I am
not certain about that. I didn't talk much about what I had testified here except to Mr. Hays, I hadn't at that time. The only thing before I made it known much was before I made it known even to Mr. Donworth, I made inquiries as to these French people. I knew Louis Dosett, the brother in law of one of these girls, and I didn't know at that time that he was a brother in law of this—and still I saw it in the paper, and saw where he and I think the three girls had made up this nuncupative will; and before I ever told anyone in regard to this except Mr. Hays, or anybody else, I went out to find out first if these people were worthy of credence—whether

I should become a witness. I was very favorably impressed with what I saw in the papers in regard to it, and then I made inquiries, not what they could testify to, but what they knew—Louis Dosett, I knew about him pretty well—I knew he was a pretty square kind of——

Mr. HOWE: All of this is objected to as incompetent, irrelevant and immaterial.

A. (Continuing:) Well, the girls, from the neighbors that I inquired of—there was Mrs. Kenworth and two or three others that lived around there, too—that knew them best—there was one lady that roomed there, and remember—I inquired of her—Miss Adrian of Lippy's college, the matron there; she had roomed there, so I was told, while Sullivan was there—I think something of that kind.

381 (Mr. WRIGHT:)

Q. What did you say the lady's name was?

A. Adrian. I think I told you that there was a girl named Adrian that roomed there, and I asked if she knew them, and she said yes, she had rooms there; she said she exchanged—she gave up her front room for Mr. Sullivan to occupy it. I said, "I don't care anything about that," I said, "What do you know about the truth and the veracity of those people who live in that house there on Seventh street?" and she said, "I consider them——

Mr. HOWE: I object to this as hearsay, incompetent, irrelevant and immaterial, and not tending to prove any of the issues in this case.

A. —"I consider them worthy of evidence," she said, "As much so as any person in the city of Seattle that I know of."

Q. Now, Mr. Coombs, the interest you have shown in making these several investigations and inquiries was induced in what way; what motive actuated you to make these investigations?

A. Well, I will say to you that the affidavit I made was—when, that I was sick and in fact the doctor—I found out afterwards—the doctor had told my folks that I was liable to drop off most any moment, but I didn't know anything about that, but I felt that way. At the same time I started right in and took an oath right
382 then and there before Mr. Peterson that I did this without favor or—because I wanted to see fair play to be done. And I think the circumstances led me up to put it down before I seen any lawyer or anyone that was interested one way or the other. It has been a peculiar characteristic of my life to be looking after anyone that I think was right, to stick by them. And that was why that I made this inquiry before I went after——

Q. Was that the only, and is that the only inducement which you have had for giving your testimony?

A. I should say yes.

Q. Were you of a close, confidential relation with Mr. Sullivan during the later years of his life?

(Objected to as leading.)

A. No, but I——

Q. Was he a man given to free expression concerning his private affairs?

A. For a man that I done so much business with he was the most reticent man that I ever struck—he was very, very close.

Q. You had done a great deal of business with him?

A. A great deal of business with him, and I did take an interest in his going to Paris because I was calculating to send my son there with him. My son—it cost me just a thousand dollars to send him up there the year before to the exposition and to go up to Dawson, and I was making arrangements for him to go with Sullivan, and the boy didn't come back in time, and in fact he was not
383 successful in Dawson, and it was a disappointment, and as quick as he got back I asked him about it, and he said——

Q. Mr. Coombs, as quick as who got back?

A. As quick as Sullivan got back.

Q. From where?

A. France.

Q. France?

A. France.

Q. He had then made the trip to France and come back?

A. Yes, he had made the trip to France and come back. I regretted that I could not have the boy go—I told him he was not successful up in Dawson, but anyway he talked to me just — I have related; he said ten years of his life was lost he thought by not going to such a place before instead of being such a reckless man.

Q. Mr. Coombs, have you told substantially all the events that took place between you and Mr. Sullivan in your last few meetings?

A. About all that—about all that I had—that I remember.

Cross-examination.

(Mr. Howe:)

Q. Mr. Coombs, how does Mr. Hays come to call you "Judge"?

A. Well, I suppose—I was the first judge of this city of Seattle. I was elected committing magistrate, which they called "Judge" at that time.

Q. That is, you were justice of the peace.

384 A. I was the first—the first city council here—it was really a town organization, but there was a police judge—I was called the committing magistrate at that time—there was a justice of the peace elected then, and I was appointed by the council.

Q. You were a committing magistrate appointed by the town council of Seattle.

A. By the town council of Seattle, yes.

Q. And that is the way in which the term "Judge" comes to be applied to you?

A. I presume so. I was afterwards justice of the peace here when these people were hung that I was telling you about.

Q. And afterwards you were constable?

A. No, sir, I never was constable.

Q. You were justice of the peace?

A. I was justice of the peace after I was elected at this time, I was also appointed by the city council, and the first time by the town council—they called it trustees, really—the first organization, you know.

Q. Now, when was this—what was the date of this newspaper which you say mentioned the fact in regard to this nuncupative will—I mean about what was the date?

A. Well, it was somewhere in December, I think.

Q. December of what year?

A. It would be '90.

Q. Not '90, 1900, you mean.

A. I mean '90—1898—that was the time—no, no, I mean 1900; 1900—now I have got it.

385 Q. Now, Judge, about what part of December?

A. Well, I don't remember that; I don't remember the dates.

Q. Just give it to us as near as you can.

Mr. HAYS: He has answered the question that he does not remember.

A. I could very quickly, if you show me the files of the paper, I could very quickly remember the date of it.

Q. Of course if you saw the file you could read the date.

A. But I could not testify in regard to it.

Q. Where is this statement which you say your niece took down?

A. Where is it?

Q. Yes.

A. The pencil marks I tore up.

Q. Now, was that the first time that you heard about that nuncupative will?

A. Yes, the very first time, yes.

Q. You say that was the first time?

A. The very first time.

Q. Now, Mr. Coombs, you have been very active in looking up evidence in behalf of Miss Carrau in this case?

A. Mr. Howe——

Q. You have been very active in looking up evidence for Miss Carrau in this case?

A. Miss Carrau?

Q. Yes.

A. I have.

Q. You called on Captain Burns in reference to it?
A. I did.
386 Q. Recently.
A. I had a talk with him—I went to him about that statement.
Q. But you called on him repeatedly, didn't you, to get evidence from him, didn't you?
A. I called on him—I called on him in regard to this matter, and he got to speaking to me——
Q. Answer my question—you called on him?
A. Yes, I did, I called on him.
Q. Repeatedly, didn't you?
A. No, sir.
Q. How many times?
A. Only twice—the other day I was a little bit surprised when he commenced to talk about it himself.
Q. Now, didn't you call on him the second time to get evidence from him?
A. No, sir; the second time I called on some other business, and that came up in the conversation; I did not call on him for that purpose. I think he started in himself, I think——
Q. Now, you also called on Mr. Keating, didn't you?
A. I called on Mr. Keating right in the start.
Q. Didn't you show Mr. Keating a written statement and try to get Mr. Keating to agree that that written statement was correct?
A. I don't remember whether I showed him that—I told him about it, anyway.
Q. Didn't you show it to him?
387 A. I do not remember whether I did; I may have done it.
Q. Didn't you call on Mr. Wright within the last month in reference to the case?
A. No, sir.
Q. You didn't?
A. No, sir.
Q. Didn't you have a conversation with him in reference to it?
A. He had a conversation with me. He started it. I went there on other business.
Q. You went there on other business?
A. Yes, I was not afraid to talk with him or any one else.
Q. Now who else did you——
A. (Continuing:) Unless they had some people on the sly to listen—when I am alone with a man I purpose to talk just as I feel about it.
Q. Well, you did have quite an extended talk with him, didn't you?
A. No, sir, not so very extended, and he rather urged it on me.
Q. Didn't you open up the subject to him first?
A. No, sir.
Q. Now, who else did you call on in reference to this case?

A. I do not remember.

Q. You do not remember anyone else?

A. I do not in particular—I have been very free talking about it to all old timers.

Q. Who did you call on in reference to seeing whether they would give testimony in this case?

388 A. I do not remember about asking that—the most that I got into this was to find out what he knew about those people—those French people, for truth and veracity, that was the most I wanted to know.

Q. You have not been calling—have not called on anybody else except Captain Burns and Mr. Keating with reference to seeing what they would testify?

A. Well, now, I don't remember. I think this, that Mr. Riddle asked me to see Bob Kellaghan. Mr. Riddle asked me to see Bob Kellaghan, and I think that if you will see him he will give you some information in regard to this, he said——

Q. When was that?

A. That was a long time ago, when Mr. Riddle was the first counselor.

Q. Now, haven't you given up a great deal of your time to working up this case for Miss Carrau?

A. I have not neglected my business at all.

Q. No, no, I did not ask you that—I asked if you had not given up a good deal of your time to working up this case for Miss Carrau?

A. No, sir, I have not.

Q. Now, Mr. Coombs, haven't you got an agreement with Miss Carrau that if she wins this case she is to make you a certain payment?

A. Nothing of the kind, sir.

Q. Hasn't she made you a promise to give you something?

A. I am happy to say she has not.

Q. Is that happiness based on——

389 A. (Interrupting.) She has not, but Mr.—I will say this, that Mr. Riddle, he said, "Any time that you mind to spend among these pioneers in getting information we will pay you for your trouble;" that is the only reward I have been offered. I will tell you this right now.

Q. But Miss Carrau has not and her counsel has not promised you anything for working up this case?

A. No, sir.

Q. Has not Miss Carrau promised you that she will remember you if she wins out.

A. I don't think she has. Now, I am not certain about that.

Q. Now, in that conversation which you had with Mr. Wright, didn't you say to him that Miss Carrau had told you that she would remember you if she won the case?

A. No, sir.

Q. Now, do you remember discussing with Mr. Wright the fact——

A. How's that?

Q. Do you remember telling Mr. Wright that up to the present time all that you had got was a couple of turkeys?

A. I didn't say that.

Q. You remember that?

A. I said that Fred Dosett, which is a brother in law, sent to my—sent to me—sent to my son in law a couple of turkeys for the house—I hadn't furnished that house at all. Mr. Dosett sent word by telephone, "There is a couple of turkeys down here for James H. Watson's house;" I did say that I got a couple of turkeys
390 at the house. That is one truthful thing that the boys told you.

Q. Now, Mr. Coombs, how was it that you communicated with Mr. Hays?

A. Well, I talked to him the same as I did to Captain Burns—I talked about it by telephone. I am not so certain about him as I was about Captain Burns and Mr. Donworth, because that was about the last one I telephoned to, was Mr. Hays.

Q. Now, before this matter came up you did not know Miss Carrau?

A. I never heard of her. I didn't know she lived there, and I didn't know until quite a while afterwards.

Q. Since this matter has come up, have you been quite intimate with her?

A. Yes.

Q. How does that come about?

A. I took a lively interest right in the start; as I told you before I knew her, I certainly would not go back on what I thought was right, when I was about to die.

Q. And when you got well you kept up that interest?

A. Well, I should say I called on her just the same as I would do with the old pioneers. I have got my time to put in and I put it in very pleasantly in calling around among the acquaintances of Seattle.

Q. And that time was put in for the purpose of getting testimony, if possible, to sustain Miss Carrau's claim, was it not?

391 A. Not after I found out that she was worthy of credence, before I had any associations with her whatever, and I got it from just such people as I have already related to you I got it from, how they were worthy of credence.

Q. I say after that time you put in a great deal of time for the purpose of enabling her to prove her case, didn't you?

A. Only when they asked me; Mr. Riddle I got more information from than I did from Mr. Hays about hunting up some. There was a party——

Q. I don't want you to tell me what the party said; I want you to answer my questions. My question was whether since that time

you hadn't been putting in a great deal of time working up this case for Miss Carrau?

A. No, I haven't put in specially only one instance, and that was when Mr. Riddle asked me to go up and hunt up Bob Kallaghan, which I did, and which he, no doubt will come in and testify about.

Q. How many times have you visited Mr. Hays in reference to this case?

A. Well, I kind of made it my headquarters when I wanted to telephone, because there was the only lawyer in town that I would go there—my office is right across here in the Hinckley block, and I have been—it has been weeks and weeks that I would not go in his office.

392 Q. How many times have you called on Mr. Riddle in reference to this case?

A. Well, really he has asked me to go in. I just guess about a month since I found out—in fact, when he got back quite a while from Dublin, only just a few days ago I went in to ask him how it came about—how it came about that he hadn't got some evidence in that—that instead of having a new commission—I don't know just how it was—he explained it to me.

Q. Now, have you been going to his office about an average of once a month since you started to look up evidence?

A. No, I didn't say that.

Q. Have you been going to Mr. Hays' office that often?

A. No, it has been a long while since anything has been—it was right in the start, a long time ago, at the time that I called—that I talked with Captain Burns—I kind of dropped or forgot about it until Wright called it up, and the other day, I knew that my evidence was as I told him, the affidavit was in the bank.

Q. Then for the last few months, for the last four or five or six months you haven't done anything towards looking up evidence for her?

A. Not anything with the exception of Captain May. Mr. Riddle wanted me to see Captain May, a Grand Army man, which I did.

Q. And when was the last time that you reported at Mr. Riddle's office as to anything which you had done in connection with this case?

393 A. As I told you, I called in there to inquire about his—to report about this Captain May.

Q. When was that?

A. That was about two or three weeks ago since he got back. I told him, I said, "Mr. May—you can find him," I said, "He will come in and give what he knows about Mr. Sullivan's case, He and Sullivan had a claim together out on the lake in the early times, and they talked a good deal."

Q. Now, when was the last time that you were in Mr. Hays' office in reference to this case?

A. I only came into Mr. Hays' office to ask in regard to the decisions. When I would see a case reported in the newspaper I would

go in or I would telephone—in fact, I had but very little talk with Mr. Hays in regard to this for quite a while.

Q. Now, were you not up in the United States court on Monday, yesterday, to hear the argument in this case?

A. That is the first time. He said, "I am going to——"

Q. Answer my question, yes or no.

A. Yes, yes, I was up there.

Q. Now, you have taken right straight along a great deal of interest in behalf of Miss Carrau, haven't you?

A. Well.

Q. Answer that, yes or no.

A. Yes, yes, I have—there is no use in talking.

Q. And you want it understood that neither Mr. Hays or
394 Mr. Riddle or Miss Carrau have promised you anything in this case?

A. I just told you that——

Q. I mean beyond that Mr. Riddle told you what you mentioned.

A. That is just exactly it.

Mr. HOWE: That is all.

Mr. HAYS: That's all.

The WITNESS: I might have told parties this: That no doubt that I would be rewarded, but I was looking out about no promises and I was pleased—I want to be put right on this. I was pleased that this woman never mentioned to me one dollar that she would pay me. That is what she did, and I was glad when she didn't; and the incident of the turkeys, I was pleased that her brother in law sent them, because I think they appreciated what I had done—I started in and gave them a standing in this community that perhaps if I had been better acquainted with them I would not have been so eager over it, but I saw that they were honest and true, and then I took an active part. I found out that they were worthy of credence, and had told the truth in that affidavit, and that is my sincere opinion.

The EXAMINER: Is there anything more? Gentlemen, do you waive the reading of this and the signature of the witness?

Mr. HOWE: We do.

Mr. HAYS: We do.

395 The EXAMINER: Is there anything further to-day, Mr. Hays?

Mr. HAYS: No, I will have no other witness to-day.

Further proceedings adjourned until to-morrow morning, February 19th, 1902, at 10 o'clock.

[SEAL.]

——— ———,

U. S. Master in Chancery.

SEATTLE, *February* 19, 1902.

Continuation of proceedings pursuant to agreement.

Present: The master in chancery. Mr. Howe, of counsel for the complainant-. Mr. Hays, counsel for the defendant-.

Reverend A. SWEERE, a witness called on behalf of the defendant-, being first duly cautioned and sworn, testifies as follows:

(Mr. HAYS:)

Q. When and where were you born?
A. I was born in Holland.
Q. In Holland?
A. Yes, sir, in the year 1841, the 26th of April.
Q. What is your business or vocation?
A. I am a priest of the Catholic church.
Q. How long have you been such?
A. Since the 15th of June, 1867.
Q. Where are you located and were you located during the past few years?
A. I came to the coast in 1891, to Seattle, and then I stayed here two years, and I was two years in North Yakima, and now I am here four years and a half.

396 Q. What particular charge or bailiwick have you?
A. I am in charge here of the Immaculate Conception church and congregation; it meets on Broadway and Madison.
Q. Are you acquainted with the defendant, Marie Carrau?
A. I have known here since—I do not know the exact time, you know, because it must be either 1891 or 1892 that they came to Seattle, the father and the three girls.
Q. Is she the older or the younger?
A. Marie Carrau, of course, the one that is married, is older. I do not know whether the older is older than Marie or not; I think Marie is the youngest. It is not always easy to ask a girl her age, you know, but I know that she is the youngest, if I remember correctly.
Q. Now, Father Sweere, do you remember the time of the death of the deceased, John Sullivan?
A. Well, I think it was about somewheres the latter part of September or the beginning of October, last year; I think that is a little over a year ago.
Q. It will be two years next September?
A. Next September, yes, sir; it will be two years. I suppose about the latter part of September or the beginning of October. In fact, I never paid particular attention, but I know it is that long.
Q. Now, did you call to see him at any time during his illness?

397 A. I heard that he was ill and went to the house. It was about, oh, I suppose about eight or ten days before he died. I went up to the house with the intention of seeing him. When I came there in the morning I found that the doctors that morning had been in conversation and said that he was out of danger and was sleeping.

Mr. Howe: I object to anything that the witness heard from other parties.

Q. Now, go ahead and make your statement.
A. I was told that he was sleeping so I did not see him.
Q. You did not disturb him?
A. I did not disturb him.
Q. Where was this that you called and that he was sick?
A. It was at the house of these Carrau girls, Seventh avenue. I do not remember the number.
Q. When did you learn first of his death?
A. I saw it in the morning paper.
Q. When?
A. Well, I think—I do not know that it was the evening paper or the morning paper, but I saw it, and I think it was the morning paper, the day after he died, you know.
Q. What did you do, if anything?

Mr. Howe: I object as immaterial.

A. I went to see Miss Carrau that same morning as soon
398 as I saw it in the paper, to see in what condition she was.
Q. What did you find?

Mr. Howe: I object as incompetent, irrelevant and immaterial.

A. I found her very much dejected on account of the death of Mr. Sullivan.
Q. State, what conversation, if any, you had with her that morning, concerning Mr. Sullivan?

Mr. Howe: I object as incompetent, irrelevant and immaterial.

A. She told me that the evening before he had called them all together that he had——

Mr. Howe: I object also on the further ground that this witness cannot testify to any transaction or conversation between Mr. Sullivan and Miss Marie Carrau, for the same reason that Marie Carrau cannot testify to such conversation or transaction; and also on the general ground of it being hearsay, and incompetent, irrelevant and immaterial.

A. (Continuing:) She told me that Mr. Sullivan had called them some time in the evening, between ten and eleven o'clock, and stated that he left all his real and personal real estate to Marie.
Q. What did you do then?

A. I then asked her whether he had made a will to that effect and she said she thought yes. I says, "Where is the will deposited?"

399 Q. What else did -he say about his room?

A. She further said that Mr. Littel had been there early in the morning and had taken away everything out of the room and she thought it was taken into the hands of Mr. Littel.

Q. What then did you do, if anything?

Mr. Howe: I object as incompetent, irrelevant and immaterial.

A. She asked me to see a lawyer about this verbal will, whether it was any good, and I do not know, how many days I waited, whether one day or two days, but I saw Dan Kelleher, and asked him whether a verbal will made before witnesses was legal in this case and he said no.

Mr. Howe: I object as incompetent, irrelevant and immaterial, and move to strike out all the conversation between the witness and any certain party, and between the witness and Marie Carrau.

A. (Continuing:) Then I told Marie Carrau what Dan Kelleher had said.

Q. What conversation, if any, did you have with anyone else, if you had any?

Mr. Howe: I object as incompetent, irrelevant and immaterial and hearsay.

A. About this matter?

Q. Yes.

A. I do not know how long after that; it was perhaps
400 some days, and perhaps weeks. I was on some business in Mr. Donworth's office, on business of my own, rather, and he brought up a conversation of this will case, or whether I did I don't remember, but he said he thought it was null and void. I told him that if he knew the circumstances as much as I knew about, I thought at least the intention of Sullivan was to have her his heir, as far as I could see.

Q. Proceed.

A. That it was Sullivan's intention, as far as I coald see, that she was to be his heir; that is what I told him. I gave him my reasons. After I gave him my reasons he told me if that was the case that we had better pursue it.

Cross-examination.

(Mr. Howe:)

Q. Father Sweere, you have taken an active interest in this matter in behalf of Miss Carrau, have you not?

A. Well, I was asked by her to see how this thing stood.

Q. I say you have taken an active interest?
A. Yes, a little.
Q. You communicated in her behalf with priests in Ireland, did you not?
A. With priests in Ireland?
Q. Yes.
A. Let me see now—I believe I wrote to one.
Q. You wrote to Father Daly, did you not?
401 A. I do not remember the name, it is so long ago; it is some time ago. I really do not remember; I know that I wrote to one. I gave that gentleman the names of those that were to be examined and I asked him to see to it that things were attended to properly.
Q. Did you not, Father Sweere, write to a priest over in Ireland, and in that letter state that unscrupulous American lawyers were going over there to examine witnesses, and asked the priest to see to it that these lawyers received no assistance.
A. I do not remember.
Q. Or words in substance, to that effect?
A. I do not remember it.
Q. Well, I say in substance, to that effect?
A. Well, it is possible that I said to see to it, that justice be done.
Q. Have you a copy of your letter?
A. No, because I never thought of this thing that I would have to be asked to testify.
Q. Have you a copy of your letter?
A. No, sir.
Q. Did you not, Father Sweere, write to a priest over in Cork, Ireland, and request that no assistance be given by the Catholics over there to the American lawyers, representing the Irish heirs?
A. Well——
Q. Yes or no.
A. The fact is I don't remember.
Q. Well, do you remember writing substantially to that effect?
402 A. I could not write any such thing because it is their duty——
Q. I ask you the direct question and will be glad to — answer yes or no.

Mr. HAYS: If you do not remember, you can say so.

A. I do not remember, really.
Q. Do you remember whether you wrote anything in substance to that effect—yes or no?
A. I wrote in substance to this effect——
Q. No, I want you to answer my question.
A. I do not remember.
Q. You do not remember anything about that matter?
A. I do not remember anything—I remember that I wrote at the

request of Marie Carrau to have these priests attend to this thing properly.

Q. Now, Father Sweere, will you kindly tell me what the priests were to do?

A. The priests—their duty is to show the records; that is their duty.

Q. Then with your request to the priests that he should show the records to the American lawyers who were representing the Irish heirs?

A. It is a duty and I could not ask him anything else, but to show the records to anyone, that has a right to see them.

Q. Now, Father Sweere, did you not ask in substance the priests over in Ireland, not to show the records to the American lawyers representing the Irish heirs?

403 A. I do not think that I did.

Q. Did you ask the priests to furnish any information to the American lawyers representing the Irish heirs?

A. I did not, the thought never struck me; I do not remember.

Q. Now, if it was the duty of the priest- in Ireland to show these records to anyone who had a right to see them, why was it that you wrote to the Irish priest- requesting them to perform their duties?

A. To perform their duty?

Q. Yes.

A. In what?

Q. In any respect.

A. It would be a useless question to ask them to perform their duties. I do not know whether I did or not because it was a thing I never thought——

Q. Well, what was it that you did ask the Irish priests to do?

A. Let me see now—it is quite a little while ago. Let me see now. I simply asked them, if I remember right that they should see to it that justice was done in this case.

Q. Did you not know that without your request the priests over there would see to it that justice was done?

A. Oh, yes, I know.

Q. Then why was it that you asked them so to do.

A. Because I was requested by Marie Carrau to write about it.

Q. And when she requested you to write then you did write them?

A. Yes, sir.

404 Q. How many times did you write them?

A. Now, I do not think that I wrote them more than once, but then I do not remember.

Q. Did you also write to Mrs. Lyons, in Belfast?

A. I believe I wrote to Mrs. —— Belfast to find out the address of the lawyer who attended to Mr. Sullivan's sister's case.

Q. When was the last time you did write to Mrs. Lyons with reference to this case?

A. I do not know, but I only wrote once.

Q. When was that?

A. Indeed I do not remember.

Q. Now, tell me, Father Sweere, what assistance could the Irish priests give to Miss Carrau in regard to the claims of the persons who were the Irish heirs?

A. What priests?

Q. What assistance could the priests give to Miss Carrau in regard to the claims of the Irish heirs?

A. I do not see that *she* could give any great help or assistance.

Q. The only assistance that they could give to Miss Carrau would be to disprove the claims of the Irish heirs, would it not be?

A. As far as I could see.

Q. And you were writing to them to give Miss Carrau assistance for the purpose of disproving the claims of the Irish heirs, was it not?

A. I do not think that I did.

405 Q. Now, please tell me as closely as you can what was in that letter that you wrote?

A. Really I cannot remember. It is so long ago, it must be months ago—I do not know how long, and I did just *right* what I was asked to by Marie Carrau and never expected to be called up to give testimony about it. So that really I never paid any attention to it.

Q. Now, that letter must have been written since last October was it not?

A. I do not know really.

Q. That was written after it was found out that we were going over there to examine witnesses under the commission, was it not?

A. I suppose, I do not know that. I suppose that is it.

Q. You sent the names of the witnesses whom we were going to examine, did you not?

A. I think so.

Q. Then it must have been written after we had been given the names of these witnesses to Mr. Hays and to Mr. Riddle?

A. Possibly.

Q. You did not know the names of the witness- before that time did you?

A. No.

Q. Now, who did you get the names of the witnesses from?

A. I believe Marie Carrau gave them to me. I am not sure.

Q. Now, see if I can refresh your memory. Was it Father Daly whom you wrote to?

406 A. I do not remember.

Q. Was it Father Lannard?

A. I do not remember to whom I addressed it.

Q. If you addressed it to one of the priests, did you address it to one connected with the South parish or with Sinfanbar.

A. I do not remember. The fact of it is that I have no record of

it, and I do not remember so distinctly a thing that I wrote to the priests.

Q. Did you write to Cork?

A. I could not say positively, I know it was either Cork or somewhere, but it was to one of these priests.

Q. But surely, Father, you must remember what city you wrote to?

A. I think it is Cork, but I am not sure.

Q. You do not know even the parish that you wrote?

A. No.

Q. Now, who gave you the names of the priest?

A. It was on the list that Miss Marie Carrau gave me.

Q. Now, if then, the names of the priests on that list were Father Canon Carey and Father Lannard and Father Daly, then it must have been one of these three, must it not?

A. I suppose so; it could hardly be otherwise.

Q. Now, was it Canon Carey?

A. I do not remember really; I do not remember very well.

407 Q. You do not remember whether it was Father Lannard or Father Daly?

A. I know it was one of the three that I wrote to.

Q. And you addressed your letter to the address of that priest as given in the notice, did you?

A. I suppose so.

Q. Now, Miss Carrau is an attendant on your church, is she?

A. Yes, sir.

Q. Now, you say this conversation which took place between you and Miss Carrau, took place the day after you read the account of John Sullivan's death in the paper?

A. I think so.

Q. And at that time Miss Carrau told you that she thought Sullivan had made a will and that Mr. Littell had been up there and had got all the papers?

A. And cleaned the room out of everything there was. She did not know what he took.

Q. Now, did she say that the will of John Sullivan she thought was safe in Mr. Littell's hands?

A. I think so.

Q. Did she at that time that she mentioned the so-called verbal will, tell you whether that will had been written out or not?

A. She did not say, no. She said she thought it was, she did not say it was.

Q. She did not tell you whether she had written it out or not?

A. No.

Q. So that the will that she meant was safe in Mr. Littell's hands, was the previous will?

408 A. She did not tell me that, no. She simply told me she thought there was a will, a written will.

Q. That she thought there was a written will?

A. That's what she thought. She told me at the same time what he had done in the evening, as I testified before.

Q. Now, she did not tell you anything at that time about this verbal will being written out?

A. No, she did not say that.

Q. Now, she did not at that time show to you any written statement of the will, did she?

A. No.

Q. And at that time you did not know that she claimed to have written out a will for Mr. Sullivan, did you?

A. No.

Q. Did you see John Sullivan the day he died?

A. No.

Q. Did you see the body?

A. No.

Q. Do you know Father, where he died?

A. He died in the house, at the Carrau's.

Q. He died at the breakfast table, did he not?

A. No, he died in his room, I think—I do not know that.

Q. Did not Miss Carrau tell you that John Sullivan had been eating his breakfast at the breakfast table and that she came in and found his head resting on the breakfast table and that he died at the breakfast table?

A. No.

Q. Did she describe how he died?

409 A. She told me that he requested her to get something to drink, or whatever it was, and she went down and when she returned she found him dead.

Q. Did she say where he was?

A. He was in his room, in his chair, at least if I remember right.

Q. He had been reading a newspaper, had he?

A. Yes, sir, I think so.

Q. That was the morning following the making of this alleged verbal will, was it not?

A. Well, now, let me see. He died in the morning and the verbal will was made in the evening between ten and eleven o'clock.

Q. He died in the morning?

A. I think so. I do not know now whether it was the next morning or not, I do not remember.

Q. Now, who else did you see in the house, besides Marie C. Carrau?

A. No one, on that occasion.

Q. When did you next go to that house to see Marie Carrau?

A. Well, I do not remember, Mr. Howe.

Q. I mean about, Father?

A. Well, it might have been three or four or five days after that. I do not know how long but I know it was after the burial I went to see her, to tell her, I think about what I saw Dan Kalleher about what he told me.

410 Q. Now, at that time that she told you of this alleged verbal will had been written out by her?

A. No; she never told me about that.

Q. She never did tell you that she had put into writing what she claimed was the verbal will?

A. She never *told me about that.*

Q. When did you first hear, Father, that the alleged verbal will had been reduced to writing?

A. I don't know. I do not know whether I heard it at all that it was reduced to writing.

Q. You do not know that you ever heard that?

A. The fact is that I do not.

Q. Now, the first time you saw her, she described the death of Sullivan fully?

A. Yes; she told me how she found him, you know. You see, when she left the room and was out a little while he had the paper in his hand, and when she returned with a cup of something he was dead.

Q. He was dressed?

A. Well, I don't know. These things did not enter into the conversation.

Q. There was a telephone in that house, was there not?

A. In fact, I do not know.

Q. Did you notice whether there was or was not?

A. I did not notice it.

Q. Was Mr. Sullivan one of your parishioners?

A. He was a Catholic.

Q. What church did he attend?

411 A. If he attended any church he probably attended down town here.

Q. Father Prefontaine's?

A. Because he lived close by there. If he ever did attend he probably attended that.

Q. Father Prefontaine's church?

A. If he did, I do not know anything about it.

Q. Now, is it not true that if there is an opportunity for a Catholic, who is in danger of death, to have the officers or the priest of the church?

A. Yes, sir.

Q. Even a Catholic who does not attend church, when death is approaching, invariably had the officers or the priest if he can get them, does he not?

A. Well he ought to. I do not know whether they always—that is a question of individual disposition.

Q. But as a rule, are not Catholics more, much more, careful when death is approaching to have the ministrations of a priest than nonCatholics?

A. Well, I do not know anything about nonCatholics, so you must excuse me.

Q. Well, put it the other way. Are not Catholics, as a rule, exceedingly careful to have the ministrations of a priest when death is near?

A. Yes, sir; when they know death is near they generally ask for a priest.

Q. Then, Father, if Sullivan, on the 24th or 25th or the 27th day of November, 1900, was in such danger of dissolution, that
412 he made an oral will, would it not have been exceedingly probable, if a priest was available, that he would have had a priest visit him at that time?

Mr. HAYS: I object to the question, first, as not being cross-examination, and second, as incompetent, irrelevant, immaterial.

A. That depends all upon his personal disposition.

Q. Do you know, as a fact, of what parish Mr. Sullivan was a parishioner?

A. I do not know the fact. I know that he was not in our parish.

Q. Well, do you know whether or not he was a parishioner of Father Prefontaine's?

A. I do not know.

Q. Do you know whether he claimed to be one?

A. I think he kind of claimed to be, but I do not know of my own personal knowledge.

Q. Now, in describing this so-called oral will, what was it that Marie Carrau said?

Mr. HAYS: I object as not cross-examination and as incompetent, irrelevant and immaterial.

A. She told me that when Mr. Sullivan got an attack that night of heart trouble that he called them all together and before them stated that Marie was his heir of all he possessed, both personal and real estate.

Q. These were the words that she told you?

A. These are about the words. I do not know exactly. I never expected to be a witness in this case.

Q. Just answer please, yes or no, whether these were the words as close as you can recollect.

413 A. I guess it is that way.

Q. Did she say whether Mr. Sullivan said anything else on the subject of his will?

A. I do not remember.

Q. Then her statement to you of what Mr. Sullivan said is what you have now stated?

A. So far as I know; as far as I remember.

Q. And she did not state to you that Sullivan said anything else on that subject than what you have stated?

A. She stated to me that Mr. Sullivan told her that he had no heirs, but I do not know whether it was on that occasion or on another occasion. I do not remember that.

Q. My question, Father Sweere, was whether what you have stated as being what she told you, that Sullivan said in regard to his will, was all that Sullivan had stated on that subject?

A. Well, he may have added these words—these words were added to it; that he did not know how long he was going to live, he did not feel very well.

Q. Did she state that to you?

A. Yes, sir.

Q. At that time?

A. Yes, sir.

Q. Now, what else did she state to you?

A. Nothing that I can remember.

Q. So what you have now stated as being told to you by Marie Carrau as to what Sullivan had told her is all that she told you that Sullivan had said on that subject?

A. I think so.

414 Q. Now, Father, coming back to your writing to the priest in Ireland, did you get a reply to your letter?

A. Not that I remember of; no, I did not. I did not get any answer. I did not expect it.

Q. Why did you not expect one—is it not customary for one priest to acknowledge communications from one to another?

A. Well, that depends—if it requires an acknowledgment, yes. It does not always require it.

Q. Have you got a communication from Mrs. Lyons in answer to your letter to her?

A. I got a simple statement of the address of the lawyer that had attended to Sullivan's sister's business.

Q. Was that also Mr. Collins?

A. I do not remember now. I think it was; it looks like the name to me, but I do not remember.

Q. He was a lawyer in Dublin, was he not?

A. I think so.

Q. Did you answer Mr. Collins?

A. No.

Q. Did you turn the letter over to Miss Carrau?

A. Now, I do not remember, possibly I did, but I do not remember.

Q. Do you keep a diary, Father?

A. No.

Q. Never have?

A. No; I do not keep a diary of these things.

Q. Now, did you write to only one priest?

A. Yes, sir.

Q. You did not write to the bishop?

A. No, sir.

415 Q. Now, did you receive any letters from anyone in Ireland with reference to this case, other than the one letter that you have mentioned?

A. Not that I remember.

Q. Now, when was it that you called on Mr. Kelleher?

A. It must have been within three or four days of the death of Mr. Sullivan; I do not know, I do not remember. It may be eight days for all I know.

Q. When was it that you had this conversation with Mr. Donworth?

A. Oh, that was quite a long time afterwards; that was an incidental thing.

Q. But it was a long time afterwards?

A. Well, quite a time afterwards. It was after these things became public through the papers, I think. It was simply an incidental thing. Mr. Donworth and myself were together on some business of my own, and incidentally when he got through he just mentioned this thing.

Q. Now, have you talked with Father Prefontaine about this case?

A. We may have, you know, probably.

Q. Have you or have you not?

A. I do not remember any particular thing. I know that I have talked about it, said something about it. I do not remember anything in detail.

416 Q. Now, in stating the matter to Mr. Kelleher, did you state to him whether this alleged oral will had been reduced to writing or not?

A. No, I did not.

Q. You do not remember it?

A. I did not know whether it was or not.

Q. Now, when Marie Carrau made this statement to you about this alleged oral will, was anybody else present?

A. No.

Q. Who did she say was present when Mr. Sullivan made this alleged oral will?

A. Her brother in law and two sisters.

Q. And at what time of night did she say it took place?

A. Sometime between ten and twelve o'clock, ten and eleven; I do not know which.

Q. Did she say what they did after the conversation with Mr. Sullivan?

A. She did not tell me; I do not remember anyway if she did.

Q. Now, this will that she said she thought would be safe in Mr. Littell's hands, that was a written will, if he made a written will?

A. She did not say that there was a written will. She simply expressed her idea that she thought there was.

Q. She thought there was a written will?

A. She thought it would be safe in his hands, if there was.

417 Q. She expressed the idea that she believed that there was a written will, did she not?

A. Yes, sir, she felt there was; that was all. I do not remember now the words that were used.

Q. But that was the impression?

A. That was the impression conveyed to me that she thought there was a written will.

Q. If there was a written will, it was safe in Mr. Littell's hands.

A. Well, I suppose that is what she meant to say, but I do not remember.

Q. Now, did she say whether she or any of her family had made any search among Mr. Sullivan's papers before Mr. Littell had got up there?

A. No.

Q. Did she say at what time Mr. Littell got there?

A. She did, but I do not remember the time that she said. I do not remember. It was immediately after he was dead, a very short time, as soon as he was moved to the undertaker's parlors, Mr. Littell examined the room and carried off everything there was there.

Redirect examination.

(Mr. HAYS:)

Q. Did Miss Carrau in this conversation tell you that she was engaged to be married to the deceased, John Sullivan?

Mr. HOWE: I object as incompetent, irrelevant and immaterial.

418 A. She told me that she was engaged to him, but to say positively that it was at that or any other time I do not remember. I do not remember what time she told me that.

(Mr. HOWE:)

Q. Father Sweere, the will which Miss Carrau thought was a written will was the one which she thought had been made in her favor?

Mr. HAYS: I object as incompetent, irrelevant and immaterial and not proper cross-examination.

A. She thought that the will had been written by Sullivan, but she did not have any positive knowledge of it.

Q. But the will that he had reference to as being a written will, which was thought Mr. Sullivan had reduced to writing, was the one which left all his property to her?

A. To her.

Q. That is correct, is it?

A. That is correct, I think.

Q. And that is the will that she thought would be safe in Mr. Littell's hands?

A. Yes, sir.

(Mr. HAYS:)

Q. The words that you stated that she uttered to you as having been the words of John Sullivan, by which *she* intended to will to her his estate, both real and personal, you have testified you believed it was her understanding had likewise been reduced to writing by Sullivan?

Mr. HOWE: I object as leading.

A. Yes, sir.

Q. You do not mean to say that the words Miss Carrau
419 stated to you to have been other than the express words to her by John Sullivan?

Mr. HOWE: I object as leading.

A. No, sir.

(Testimony of witness closed.)

[SEAL.] ——— ———,
U. S. Master in Chancery.

(Signature of witness waived by the witness and by counsel for the respective parties.)

FEBRUARY 20TH, 1902—10 a. m.

Continuation of proceedings pursuant to adjournment.
Present: The examiner. J. B. Howe, J. B. Wright, C. H. Farrell, solicitors in behalf of complainant-, and W. F. Hays, solicitor for defendant-.

DANIEL KELLEHER, produced as a witness in behalf of defendant-, being first duly cautioned and sworn, testifies as follows:

(Mr. HAYS:)

Q. State your name.
A. Daniel Kelleher.
Q. Where and when were you born?
A. In 1864 in Massachusetts.
Q. Where do you reside?
A. Seattle.
Q. How long have you resided here?
420 A. Twelve years.
Q. Are you acquainted with the Rev. Father Sweere?
A. Yes.
Q. How long have you known him?
A. I should think four or five or six years.
Q. Are you acquainted with the defendant, Marie Carrau?
A. Only by sight.

Q. You never had any conversation with her?
A. Never.
Q. What, if any, opinion did you furnish Father Sweere with reference to nuncupative or other wills at any time?

Mr. Howe: I object to that as irrelevant, immaterial and incompetent.

A. I don't think I furnished any opinion, you might say; at the same time he met me one day—I think that that is the conversation you referred to—he met me one day at the entrance to the Bailey building; I think I was going out, and he said—no, I was coming in, and he said he had been up to see me, and he asked me——

Mr. Howe: Solicitor for complainant- objects to any and all conversations between the witness and Father Sweere on the ground that the same is irrelevant, immaterial, incompetent and hearsay.

A. (Continuing:) He asked me if an oral will was good. I was rushing out and I simply said, "I don't think so," or words to that effect.

Q. When was this?
421 A. That was; I don't remember the time, but it was about the time of the death of John Sullivan; within two or three days afterwards, I think, or right about that time.

Cross-examination.

(Mr. Howe:)

Q. Can you fix the date at all accurately Mr. Kelleher?
A. No, I cannot, Mr. Howe. I paid very little attention to it, but I know it was about that time.
Q. And the conversation took place on the street?
A. I think it was. I think I was going down the steps—going up the steps of the Bailey building as he was coming down; it was right on the steps, in the vestibule of the Second Avenue entrance; that is my recollection.
Q. You have not, and your firm has not any connection with this case in any way?
A. None whatever.

(Testimony of witness closed.)

By agreement of all parties it is stipulated that the witness' signature to the foregoing is waived.

[SEAL.] ——— ———,
U. S. Master in Chancery.

SEATTLE, WN., *February* 21*st*, 1902.

Present: The master in chancery. Mr. Howe, of counsel for complainants. Mr. Hays, counsel for defendants.

422 By agreement of counsel the hearing set for this date, for the taking of testimony on behalf of the defendant- was continued until February 24th, 1902, at the hour of 10 o'clock a. m.

SEATTLE, WN., *February* 24*th*, 1902.

Present: The master in chancery. Mr. Howe, of counsel for complainants. Mr. Hays, counsel for defendants.

By agreement of counsel the hearing set for this date for the taking of testimony on behalf of the defendant- was continued until February 25th, 1902, at the hour of 10 o'clock a. m.

SEATTLE, WN., *February* 25*th*, 1902.

Present: The master in chancery. Mr. Howe, of counsel for complainants. Mr. Hays, counsel for defendants.

It is stipulated by and between counsel that the time for taking testimony in this suit is extended up to and inclusive of the 10th day of March, 1902, and the necessity for any application therefor is waived.

By agreement of counsel the hearing set for this date for the taking of testimony on behalf of the defendant- was continued until March 3d, 1902, at the hour of 10 o'clock a. m.

SEATTLE, *March* 3, 1902—10 o'clock a. m.

Present: The master in chancery. Mr. Hays, counsel for defendants. Mr. Howe, of counsel for the petitioners.

423 By agreement of counsel the taking of testimony was continued until March 4th, 1902, at 10 o'clock, a. m.

SEATTLE, *March* 4, 1902—10 o'clock a. m.

Present: The master in chancery. Mr. Howe, of counsel for the petitioners. Mr. Hays, counsel for the defendant-.

By agreement of counsel the taking of testimony was continued until 2 o'clock p. m. this day.

SEATTLE, WASH., 2 P. M., TUESDAY, *March* 4, 1902.

Present: The master in chancery. Mr. Howe. Mr. Hays.

Continuation of proceedings pursuant to adjournment, as follows, to wit:

TERRENCE O'BRIEN, recalled as a witness for and on behalf of defendant-, testified:

(Mr. HAYS:)

Q. State your name.
A. Terrence O'Brien.

Q. What is your age and residence?
A. Age, 53; and residence, Seattle; almost 53.
Q. How long have you resided in Seattle?
A. Since November, '64.
Q. Were you acquainted with the deceased, John Sullivan?
A. Yes, sir.
Q. What conversation, if any, did you ever hear in which John Sullivan made statements concerning his birth?

424 Mr. HOWE: Objected to as immaterial and incompetent.

A. Well, sometime about thirty years ago, as near as I recollect now, he had a conversation with my father in his building where he done business down there, and I could not state positive whether the question was asked by my father, or how the conversation came up as to his particular birth place, I cannot recollect positively as to that, but my impression is——

Mr. HOWE: We object to what the impression of the witness is.

A. (Continuing:) Yes, I can't state positively, but the word "Bandon," or near Bandon was used, whether it was with reference to himself or to another; I am not positive, but I was led to think at the time.

Mr. HOWE: We object to what the witness was led to think.

Q. Just state your best impressions.

Mr. HOWE: We object to the witness stating what his impression was on the ground that it is incompetent.

A. Well, I was led to think at the time that it referred to himself, although I can't swear positively whether it did refer to himself or whether the conversation—whether the question was asked in regard to himself or another party itself.
Q. What was the statement he then made?

Mr. HOWE: Objected to as incompetent, irrelevant and immaterial.

425 A. Well, at Bandon or near Bandon.
Q. That he was born at or near Bandon?

Mr. HOWE: Objected to as leading and incompetent.

A. Well, I could not say that, whether he was born, but my impression was that the question was that way. I could not state further to that.
Q. Did he make any statements at that or any other time in your presence and hearing concerning his father's marriage?
A. Not to my—not in my hearing, I never heard it.

Cross-examination.

(Mr. HOWE:)

Q. Are you, Mr. O'Brien, acquainted with Cork and its surroundings?

A. Only from reading of it, the history of the country.

Q. Do you know that there is a Bandon road right by Cork?

A. Railroad?

Q. Oh, no, a road right near Evergreen street, where Mr. Sullivan was born?

A. I do not know that, do not remember of ever reading of it and knowing that fact.

Q. If then it is a fact that there is a Bandon road right in Cork, you do not know whether Mr. Sullivan was speaking of that Bandon or another Bandon, do you?

Mr. HAYS: I object to the question as not being cross-examination.

426 A. No, I could not state as to that. I did not think the conversation referred to a road, however.

Q. Now, when did this conversation take place, Mr. O'Brien?

A. About—as near as I can remember—about soon after my father came here. It was thirty or over thirty years ago, soon after my father arrived here. He and Mr. Sullivan were very intimate friends.

Q. You do not remember and do not pretend to state the exact words that were said to Mr. Sullivan or that Mr. Sullivan said to you?

A. No, I could not state the exact words.

Q. And as I understand you, you do not know—leave out the question of impression now—I understand you do not know whether Sullivan had reference to himself or some one else as coming from Bandon, do you?

A. No, I could not state that, could not state whether it referred to himself or to another person, but as I said before, my impression was——

Q. But I say you do not know?

A. No, I do not know, I could not swear positive as to that.

Q. Who else was present at the time of that conversation?

A. I do not think there was anybody else in the store at the time. I was sitting off some little distance waiting for my father to go home.

Q. Now, where did the conversation take place?

A. On Commercial street, in Mr. Sullivan's store.

427 Q. Now, Mr. O'Brien, please explain to me how, after the lapse of thirty years you came to give this information to Mr. Hays—when and where did you communicate this conversation to Mr. Hays?

A. I did not give this information to Mr. Hays at any time. I

had a conversation soon after my appointment with Mr. Gleason. He had some letters from Ireland, and he came to me and asked me if I knew where Sullivan was born, and I told him that I did not, and I spoke of this conversation with my father.

Q. Well, did you ever communicate this information to Mr. Riddle?

A. No, sir, I did not.

Q. You do not know, then, how Mr. Hays got the information that you have testified to?

A. Mr. Hays told me he got it from Mr. Gleason.

Q. Now, when did Mr. Hays tell you that he got it from Mr. Gleason?

A. To-day.

Q. Well, where did you see Mr. Hays to-day?

A. I seen him in the Pioneer building—or, at least, in the Bailey building.

Q. Well, where?

A. Mr. Riddle's office.

Q. Well, did you and Mr. Hays have conversation to-day about your testimony over at Mr. Riddle's office?

A. Yes, he spoke to me then, that is, when the conversation came up.

Q. And until you spoke to Mr. Gleason this matter of the conversation with Mr. Sullivan had never been discussed by you with any one, is that so?

428 A. Not that I know of, no. I do not think I spoke to anyone else but Gleason about it. I told Gleason that my impression was that the conversation referred to the birth place at that time, that I thought so, but was not positive.

Q. And you are not to say positive whether it referred to Sullivan or to anybody else, are you?

A. No, I am not positive, I could not swear positive, but the question was asked, and from that it came out that it was at or near Bandon, that came out after the question was asked. I told him I was under the impression that was his birth place and told him of the conversation that I overheard.

Q. Now, was he asked in so many words where he was born?

Mr. HAYS: I object to the question. The witness has consumed a good deal of time and taken up a great deal of folios, and I will ask that the costs be taxed to him.

A. I could not state that, Mr. Howe.

Q. Now, Mr. O'Brien, how did Mr. Sullivan come to say anything about Bandon—what was the question put to him?

A. I have answered that several times. I could not say just positively how the question came, but the manner of the answer led me to believe——

Q. I do not want what you believe, Mr. O'Brien, in reference to Bandon.

429 A. Well, I do not know, I could not swear.

(Testimony of witness closed.)

[SEAL.]

——— ———,
U. S. Master in Chancery.

SEATTLE, *March* 5, 1902—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.

Present: The master in chancery. Mr. Howe and Mr. Farrell, of counsel for the petitioners. Mr. Hays, counsel for the defendant-.

Mr. JAMES PARK, a witness called on behalf of the defendant-, being duly sworn, testifies as follows:

(Mr. HAYS:)

Q. Where do you reside?

A. I reside here in Seattle, sometimes in Whatcom county.

Q. How long have you lived here?

A. Twenty years.

Q. What has been and is your business?

A. Contractor and builder.

Q. On an extensive or small scale?

A. I do not know—of course I have done extensive contracting here.

Q. Have you built any special buildings in this city?

A. Yes, sir, I built this one here where we are sitting.

Q. That is the New York block?

A. Yes, sir.

430 Q. Are you acquainted with the deceased, John Sullivan?

A. Yes, sir, I got acquainted with him right after I came here; he was on Commercial street, and he used to keep a cigar store, and apples and such things.

Q. At the time he was running a little store?

A. Yes, down on the street there.

Q. Have you ever talked with him concerning his early life?

A. We talked about our early life, both of us.

Q. Where were you born?

A. I was born in Belfast, Ireland. And he was bo n in the south, and we were just talking casually about our early days.

Q. Now, state what he said to you concerning his early life and family or relations?

Mr. HOWE: I object as incompetent, irrelevant, and immaterial.

A. I could not relate exactly what he did say. He left home very early, probably fourteen or fifteen or sixteen years old. I could not say. I left when I was nineteen and he went to sea or somewhere, he went to sea from home and turned up here; that is all that I remember.

Q. Did he state why he left home?

A. Well, it was some one of his parents that was not very good to him. It was something in the family that made him leave home so early to get out.

431 Q. What parent, or if you know, what were the circumstances?

A. Well, I could not say whether the father or the mother. It ran through my mind that there was a second marriage or something.

Q. Had his father or mother been married a second time?

Mr. Howe: I object as leading.

A. That is what runs through my mind.

Q. Well, was this difficulty owing to this second marriage?

Mr. Howe: I object as leading.

A. I do not know whether it was or not. I do not know whether the difficulty was that or not, but it was hardship about home, he did not think much of his home. He did not think much of his old country there. He was thoroughly an American.

Q. What was his religious tastes, if he had any?

A. Well, I think he was brought up in the Catholic faith, but he did not take much stock in it.

Q. Himself?

A. No.

Q. He was not a member and did not attend church?

A. No, I never heard him speak about religion.

Q. Was he a man that was talkative or communicative or reticent?

A. Not generally talkative, very much. Kind of joking,
432 that is about all, he never talked much. Of course we talked about where I came from and where he came from.

Q. Did he tell you where he was born?

A. No, he did not. The south of Ireland, Queenstown or somewhere, I could not say. He came from there somewhere, I could not say.

Cross-examination.

(Mr. Howe:)

Q. Where do you live, Mr. Park?

A. I live here in town now.

Q. What place in town?

A. I live in a hotel some times.

Q. What hotel?

A. I was rooming up at the corner of Maynard and Yesler Way.

Q. And where are you rooming now?

A. I am rooming there now.

Q. How long have you been rooming there?

A. About fifteen or sixteen years. That is back and forth from Whatcom county. I sometimes live in Whatcom county. I was there all last year.

Q. That is the red house that you speak of?

A. Yes, sir.

Q. You are the James Park who had a suit against the city?

A. Yes, sir.

Q. Now, when did this conversation that you say you had with Mr. Sullivan, take place?

A. Oh, it must have been fifteen or seventeen years ago.

433 Q. That is when he was running this little store on Commercial street.

A. Yes, sir, when I first came.

Q. That was the time?

A. Yes, sir.

Q. Now, you do not mean to be positive that he told you that there was a second marriage?

A. No, I could not say that.

Q. Now, you have not a positive recollection as to that, have you?

A. Well, there was something in regard—that run through my mind.

Q. You are not positive that he stated to you the fact, are you?

A. Well, no, I could not say that I am.

Q. Now neither are you positive that he told you whether there was any trouble in the family or whether he left the old country on account of hardships, are you?

A. Yes, I remember that.

Q. Now, you say he was a pretty close-mouthed man?

A. Well, he was not a man that would tell you everything when he met you, not of that class. There was very little talk, I never talked about anything after that that I remember.

Q. That was the only conversation?

A. Well, we talked once in a while about the old country and so forth.

Q. But with reference to these family matters, that is the only occasion that you had any talk?

434 A. Yes, sir, original, starting from home.

Q. And that is all that you and he conferred on with reference to his family?

A. Yes, sir, we never talked of it any more.

(Testimony of witness closed.)

(Signature *of* testimony waived by the witness and also by counsel for the respective parties.)

At this time further proceedings were adjourned until 2 o'clock p. m.

[SEAL.]

____ ____,

U. S. Master in Chancery.

Mrs. ETHEL M. EAMES, a witness for and on behalf of defendant, called and duly sworn, testified:

(Mr. HAYS:)

Q. State your name.
A. Ethel M. Eames.
Q. You are the wife of Doctor Eames?
A. I am.
Q. Where do you reside?
A. 1421 Seventh avenue.
Q. How long have you resided there?
A. Since seven years ago, the 18th day of last December.
Q. How long have you been married to Doctor Eames?
A. Seven years last August, the 15th day.
Q. Were you previously married?
A. I was.
Q. To whom?
A. Fred Drew.
Q. The son of——
A. M. S. Drew.
Q. Now deceased?
A. Now deceased.
435 Q. Are you acquainted with the defendant Marie Carrau?
A. I am.
Q. How long have you known her?
A. Ever since I have lived in my present residence.
Q. Where does she reside with reference to your present residence?
A. I can almost touch the house where she lives; she lives next door.
Q. Adjacent houses?
A. Adjacent.
Q. Are you acquainted with the other members of her family?
A. Very well.
Q. What has been the nature of your acquaintance with Marie Carrau during the time you have known her, intimate or otherwise?

Mr. HOWE: Objected to as immaterial.

A. Very intimate.
Q. Very intimate?
A. Very intimate.
Q. State how frequently you saw her during the past six or seven years that you have resided there?

Mr. HOWE: Objected to as immaterial.

A. Perhaps a dozen times a day, some days more, some days less, most any time of the day.

Q. Were your habits almost like one family, your relationship such that you pass back and forth *ad libitum?*

A. Quite so.

Q. What special, if any, privileges and relations did you have with her and with her family which gave you entrée, if you have such entrée?

436 Mr. HOWE: Objected to as immaterial?

A. I have a key to the front door, and have had for two years or more.

Q. For how long?

A. I should judge for two years.

Q. What purpose have you had that front door key for?

Mr. HOWE: Same objection.

A. I have no telephone in my house, and I was granted the privilege by Madame Daussatt to use their telephone at will.

Q. You state, please, whether you knew John Sullivan?

A. I knew John Sullivan.

Q. Were you acquainted with the circumstances of his life prior to his death, where he lived?

A. I do not just understand, Mr. Hays.

Q. Were you acquainted with where he resided prior to his death?

A. Yes, I was.

Q. Where was that?

A. Next door at Mrs. Daussat's.

Q. Lived at Mrs. Daussat's

A. Yes, lived at Mrs. Daussat's.

Q. Who is Mrs Daussat?

A. She is Marie Carrau's sister, with whom Marie Carrau resides.

Q. Now, in what way was Mr. Sullivan living there?

A. He came as I understood it, first as a boarder.

Q. As a boarder?

437 A. As a boarder, to be one of the family. I understood he was to pay, but he was to be one of the family and wished to take up the study of French.

Q. Now, to your knowledge how long was he living at the Daussat residence?

A. I should judge a couple of months.

Q. Prior to his death immediately?

A. Prior to his death.

Q. During that time did you see him frequently or otherwise?

A. Very often, very often, every day, I should think, sometimes twice a day, and sometimes perhaps once.

Q. Did you observe him in company at any time with Marie Carrau?

A. Yes.

Q. What conversation, if any, did you have or hear between Marie Carrau and the deceased John Sullivan?

Mr. Howe: Objected to as immaterial and incompetent.

A. Why many conversations. Nothing perhaps, when he first arrived to say anything at great length. They simply were together all the time; she met him at the gate and met him at the door; she went with him to the gate, which was a most unusual thing for Marie Carrau.

Mr. Howe: That is objected to, and I move to strike out the answer of the witness on the ground that it is not responsive to the question.

Q. What were Marie Carrau's habits of life?

438 Mr. Howe: Objected to as immaterial and incompetent.

A. She lived very quietly; she received few callers. I never knew her to have a man call on her that I knew of; she never was in company with any man except Mr. Sullivan, that I ever knew of; I never saw her with any man to go out with him, except her brother. Her life was of the purest and of the best; she was devoted to her church, being a Roman Catholic, and lived as good and pure a life as any one could. I considered her a very good instructor for my young daughter.

Q. Has she been teaching and is she teaching your young daughter the French language?

A. Yes.

Q. Now, in your observance of the state and foundation of Mr. Sullivan in that home, what effect did his general manners have upon your mind as to his relationship with the defendant, Marie Carrau?

Mr. Howe: Objected to as incompetent, irrelevant and immaterial.

A. His relations seemed to be of the most intimate; he was apparently one of the family after he had been there a short time, and from general appearances and the way he acted, I judged he intended to be one of the family.

Q. Now, Mrs. Eames, what conversation, if any, did you hear beween Marie Carrau and the deceased John Sullivan?

439 Mr. Howe: Objected to as incompetent, irrelevant and immaterial.

A. I heard a proposal of marriage.

Q. Under what circumstances and where?

A. I went into the hall to use the telephone, which, as I said, was my privilege, and it being a ten-party line, which is not unusual, I did not succeed in getting "Central," and I hung up the 'phone to await my turn, and while standing idly in the front door, doing

nothing, I was attracted by voices in the parlor and overheard Mr. Sullivan make Marie Carrau a formal offer of marriage.

Q. State as nearly as you can his exact language, what was said by him and by her?

Mr. Howe: Objected to as incompetent, irrelevant and immaterial.

A. He was urging her apparently, when my attention was attracted, to give her answer. He said he had waited the time she stipulated, and as he had told her he loved her dearly, and felt she could make him happy and he said, "As you know, I have no relatives and no friends and I am possessed of a good deal of means, property, money, and if you consent to become my wife, I will absolutely convey to you everything I possess in this world. I love you dearly and feel I cannot live without you."

Q. What answer, if any, did she make him?

Mr. Howe: Same objection.

440 A. She seemed to hesitate somewhat and then she said she had considered the matter, and had decided to become his wife; she thoroughly respected and admired him and had quite made up her mind that she would be his wife.

Q. When next did you see him or at what times—when was this with reference to his death?

A. It was some time early in September. This matter has not been impressed upon my mind, I did not expect to have any reason to have it impressed upon my mind, but I should judge it was in the early part of September, perhaps the 10th, or in the neighborhood of the 15th somewhere.

Q. Anyway it was before his death sometime about a week or ten days or so?

A. Sometime perhaps a week or ten days before his death.

Q. Now, Mrs. Eames, how do you know that this conversation between Mr. Sullivan and Miss Carrau was between those two?

A. I saw them.

Q. Did you see them at the time of the holding of this conversation, before or after?

A. I saw them then and after. I passed through the house and out the back door and went home and saw them sitting on the lounge in the parlor together.

Q. Were they aware of your presence in the house at the time of this conversation to your knowledge?

A. I think not; they gave no sign that they were.

441 Q. What was your knowledge of the last illness of Mr. Sullivan, if any?

A. Well, I had really very little actual knowledge of it. I was aware the man was sick, and was very sick, and heard from him every day, saw the doctor go in and practically that was all of the knowledge I had. I am not gifted with a great deal of curiosity, I did not press into the matter.

Q. Now, Mrs. Eames, were you there at the time of his death or thereabouts?

A. I was there before he was actually dead, though he was too far gone to be anything more than practically dead.

Q. Was he conscious or——

A. Not at all.

Q. Unconscious?

A. Yes.

Q. How did you happen to be there at that time?

A. Miss Marie called me—not Miss Marie but her sister called me. I was busy at my household duties, and I heard her call and opening the window on the side of the house. I went through and went in and went upstairs as she directed me to.

Q. You passed through the window into the house?

A. I passed through the window on to the walk and from there into the house—the walk which runs along by my dining-room window. That was my usual way of going.

Q. Was it any unusual circumstance that caused you in going at that time to hasten?

442 A. Why she seemed very much alarmed and very much excited and she thought Mr. Sullivan was dead. Of course I went with as much rapidity as I could under the circumstances.

Q. What did you find when you got to his room?

A. To all appearances he was dead. He was lying with his eyes open. To look at him one would hardly think he was dead, but he was very quiet, and he still held the newspaper in his hand and had glasses on his eyes.

Q. He had glasses on his eyes at the time?

A. Yes, gold-bowed glasses.

Q. Was he apparently, mechanically holding the glasses on his eyes?

A. Yes, he was apparently reading the paper, but I had seen many dead people, and I judged from his looks he was in very serious straits. I went over and put my finger on his pulse, and as near as I could judge, it just seemed to flutter, and then he seemed to settle, rather the paper dropped down that way (illustrating) and he was dead.

Q. What time was this in the day, if you remember?

A. It was somewhere in the neighborhood—between ten and eleven o'clock, I could not give the exact time. I was busy with my duties at the time and paid little attention at the time, but I should judge between ten and eleven.

Q. It might have been eight o'clock, might it not?

443 A. No, it was not eight o'clock, I am positive as to that, and it was not nine o'clock.

Q. What then was done, if you know, with reference to the removal of the body?

A. Why some member of the family, I do not know which one went to telephone to Doctor Carman—they asked me what they

should do; I said the very first thing to do is to telephone to the doctor, and they telephoned to Doctor Carman, but being so excited, they did not seem to be able to make him understand, and I went and rang up the 'phone myself and got Doctor Carman, and told him that Mr. Sullivan was dead, and he came to the house of course.

Q. And Doctor Carman came to the house?

A. He came to the house.

Q. Did you remain there during all this time?

A. I did.

Q. What next was done?

A. Doctor Carman came and came upstairs and looked at Mr. Sullivan and said there was no doubt he was dead—seemed much surprised—and he went down stairs and another gentleman came up with him and——

Q. Who was that other gentleman?

A. I had never seen him before, but I was told it was Mr. Littell.

Q. What was then done?

A. They looked at Mr. Sullivan, then they opened the wardrobe—they asked Miss Marie for his valise, and she gave it to them
444 and they opened the wardrobe; they opened the wardrobe, but what they took out of the wardrobe I cannot say, because I was sitting by the window, but I know they evidently took out things and filled the valise and took his glasses and left the house

Q. Where was this window in which you were situated?

A. It was facing Seventh street.

Q. Was it in any way concealed or obstructed from view, the place you were at the time?

A. It was and it was not. If they had looked there I do not think they could have failed to see me, but I am not sure that either Mr. Littell or Doctor Carman saw me. I did not try in any way to force my presence upon them or attention.

Q. What did Marie Carrau do when she entered the room, if anything?

Mr. Howe: Objected to as incompetent, irrelevant and immaterial.

A. She was beside the bed crying and wringing her hands, acting as if she was very much distressed.

Q. Just give as near as you can what she did?

Mr. Howe: Same objection.

A. Well, when I entered the room, she was on her knees, as I said, crying and wringing her hands, weeping, and seemed to be very much distressed, and after they left—after Mr. Littell and Doctor Carman left—I drew down the curtains of the room and drew the sheet over the man and led her out of the room, and as she got to the door of the room, she flew back to the bed and laid her
445 head on his breast a moment, as if she prayed, and then she came quietly with me downstairs, except that she continued

to wring her hands and give every sign of a person who is suffering mentally.

(Signed) ETHEL M. EAMES.

Cross-examination.

(Mr. HOWE:)

Q. Mrs. Eames, how long have you been living where you were living at the time?

A. Seven years last December.

Q. And was Doctor Eames there at the time?

A. He was not there.

Q. Where was he?

A. You mean at the time Mr. Sullivan died?

Q. Yes.

A. Well, that would be a hard question for me to answer. He was not at home; that is all I can tell you.

Q. I mean was he in Seattle?

A. Oh, he was in Seattle, certainly.

Q. Was he at home the night previous to Mr. Sullivan's death?

A. He was at home in the town, he was not in the house before midnight, I am quite sure of that.

Q. Before midnight?

A. It is quite unusual for Doctor to be in before midnight.

Q. Well, did he arrive at home about midnight?

A. Well, it would be a hard matter for me to say, Mr. Howe.

446 Q. I mean, did he arrive at home about midnight, not exactly at that time?

A. I would presume about midnight, that would be the best of my—as near as I could judge, he came about midnight.

Q. And did he remain at home during the balance of the night?

A. I do not know. He may and may not have.

Q. I am only asking you to give me your best recollection, Mrs. Eames.

A. But, Mr. Howe, it is utterly impossible for me to remember a little detail like that. He may stay home to-night, he may not be home to-morrow night; it is impossible to tell; my husband is a physician.

Q. What I am trying to get at is, Mrs. Eames, whether you remember your husband was at home the balance of that night?

A. I would not be able to remember, no.

Q. Now, Mrs. Eames, suppose that the doctor's memorandum-book shows that he was at home during the balance of that night, you would have no doubt that he was at home the balance of the night?

A. Why, if my husband said he was home and was positive he was home, I would believe he was at home, but I would have doubts about my husband's memorandum-book showing positively that he was at home, because I do not believe he ever put such things down.

Q. You do not mean to be understood though, that as a
447 matter of fact he was not at home the balance of that night, do you?

Mr. HAYS: I object to the question as being immaterial.

A. Why, I can't see why I should say he was at home, or that he was not at home, when I do not know whether he was home or was not home. He might have been out once and may have been out twenty times, or he may not have been at home at all.

Q. But I say you do not mean to be understood that you state it as a fact that he was not at home the balance of that night do you?

A. Nor am I to be understood as stating that he was at home.

Mr. HAYS: I object to the question and to the manner of counsel in questioning the witness.

Mr. HOWE: I have been perfectly respectful to Mrs. Eames and intend to be.

Q. Now, will you kindly answer the question, Mrs. Eames?

A. I have answered it to the best of my ability, Mr. Howe. I say I do not know whether he was at home, and I do not know whether he was not at home.

Q. Then I say you do not mean to say he was not at home that night.

A. I do not intend or mean to say he was not at home that night or that he was at home.

Q. I want to put that question again and ask you to give
448 me an answer yes or no. You do not mean to say that he was not at home from twelve o'clock the night before Mr. Sullivan's death to the next morning, do you?

A. I do not mean to say that; no.

Q. Now, will you describe where the telephone in the Carrau house is located?

A. At the front door on the left-hand side.

Q. On the left hand side as you go in?

A. As you go in the door.

Q. It is a ten party line?

A. It is a ten party line. I judge sometimes it must be a twenty party line.

Q. Now, what time of day was it that you heard Mr. Sullivan making the proposal of marriage to Miss Carrau?

A. Sometime in the afternoon, I should judge perhaps half-past three or four o'clock—sometime the latter part of the afternoon.

Q. Are you sure it was half-past three—I mean between three and four?

A. No, I am not positive. I say the latter part of the afternoon. It may have been three, may have been four, maybe half-past four.

Q. May it have been five?

A. Possibly.

Q. May it have been six?

A. I hardly think so. I would hardly be there at that time

449 Q. Was six o'clock their dinner hour?

A. I do not know whether it is or not. Sometimes it is three and sometimes it is four.

Q. They are not very regular in that respect?

A. They are very irregular, but at six o'clock I usually have duties of my own to attend to.

Q. That is your dinner hour, is it?

A. No, but we usually have dinner between half-past six and seven and as I usually do my own housework; I had things to attend to myself.

Q. Now, what room was it where Mr. Sullivan and Miss Carrau were in?

A. What is known as the parlor, of course.

Q. And how many doors has that room?

A. It has one opening from the hall, and it is connected by folding doors with the back parlor.

Q. Now, was the door opening into the hall open at that time?

A. A very little; enough so I could see it was open.

Q. And where were they sitting?

A. On a lounge.

Q. Were they sitting or standing?

A. They were sitting on a lounge which was near the door.

Q. Could you see them?

A. I did see them.

Q. Now, was the lounge nearer the hall or the farther side of the room?

450 A. It stood between; one end of the lounge comes to the folding doors and one comes towards the other door.

Q. And which end were they sitting on?

A. Well, they could not both of them sit on one end; I guess they were sitting near the middle.

Q. They were sitting near the middle?

A. Yes.

Q. Now, I suppose to the average lady that was an exceedingly interesting conversation, was it not?

A. Would it not be to you?

Q. But I am asking the questions, Mrs. Eames. I say to the average lady that was an exceedingly interesting conversation, was it not?

A. Why, of course it was interesting.

Q. And had you taken down the 'phone at that time?

A. Yes, I had taken down the 'phone and——

Q. And what did you do when you discovered that this conversation was going on?

A. I was standing near the front door, and I simply stood still. It was very interesting to me.

Q. You did not go out?

A. I did not go out; I wanted to use the 'phone.

Q. That, however, was a very private conversation between the two people, was it not?

A. Yes, oh, yes—I do not know, they were not whispering.

Q. No, they were not whispering, but——

451 A. If people wish to propose with the doors wide open, why you know you can't help it, if somebody hears them.

Q. You say you had taken down -he 'phone?

A. Yes.

Q. Had you hung it up at once?

A. Central said, "Line is busy." I presume I immediately hung it up.

Q. Did you immediately go out?

A. No, I was waiting, as I say, to try the 'phone again. It is a ten party line and——

Q. Did you go back and try it?

A. Yes, I went back and tried it.

Q. How long were you there?

A. I could not limit the time, I presume it seemed longer to me than to them.

Q. About how long was it?

A. It might have been ten minutes or such a matter. Sometimes it is half an hour before I get central.

Q. I mean this particular time, how long were you there?

A. I should judge I might have been there between five and ten minutes.

Q. Did you congratulate Miss Carrau on the engagement?

A. I did not.

Q. Did you say anything to them?

A. I did not.

Q. Did you say anything in regard to the engagement to Mr. Sullivan?

A. I did not.

452 Q. Did you ever say anything to her in regard to the engagement?

A. I did not.

Q. Did you congratulate Mr. Sullivan?

A. No, sir.

Q. Now, did they leave the room first or did you leave the house before they left the room?

A. I left the house and left them still sitting on the lounge enjoying each other's society.

Q. And so far as you know they may have continued to enjoy each other's society for a long time afterwards?

A. I think they would be foolish if they did not, don't you?

Q. I know, but I say that is a fact, is it?

A. I do not know; I suppose so.

Q. Now, how long before Mr. Sullivan's death was this?

A. I should judge ten days or two weeks perhaps.

Q. Now, which was it, ten days or two weeks?

A. I could not tell. This was not impressed on my mind, this was merely an incident, and I did not suppose at this time that it ever again would be referred to.

Q. Now, Mrs. Eames, do you mean to say that you ever have been present when a man (of course we eliminate present company in this question), made a proposal of marriage to a lady before?

A. No, I do not think I ever was.

Q. Then it was an incident that would naturally impress itself on a woman's mind, would it not?

453 A. Yes, but I think hardly enough to make her go home and hunt up a calendar to see the date; do you think so?

Q. Do you not remember——

A. And if I have any failing, it is never knowing the day of the month; that is my principal failing.

Q. Then you are unable to tell whether it was ten days or two weeks before Mr. Sullivan's death?

A. Yes, it might have been ten days or might have been two weeks. It was somewhere in that neighborhood. I should judge, as near as I can recollect the 10th or 15th, or between the 10th and 15th of the month.

Q. But which it was, you cannot tell?

A. No, it might have been the 12th.

Q. You know it was not more than ten days or two weeks?

A. Yes.

Q. Do you know it was more than five days?

A. Yes, it was more than five days.

Q. Please repeat just exactly the words, Mr. Sullivan used?

A. I do not know as I can repeat exactly the words. As near as I can remember them——

Q. What was the first thing you heard him say?

A. He said, "I have waited for the length of time"—to this effect, I cannot say it is exactly the words, but as near as I can remember he says: "Now, I have waited the length of time you have required and want my answer. I love you and wish you for my wife,

454 and if you will consent to become my wife"—no, he says first, "You know I have much property and no relatives—much property and no relatives, and if you will consent to become my wife, I will convey to you everything I have, both money and property. I love you and believe you could make me happy." "I feel I could not live without you," which was a most astonishing statement to make.

Q. And what did Miss Carrau say?

A. She said she had considered the matter and thoroughly admired and respected him and had decided to become his wife.

Q. Now, have you mentioned the entire conversation?

A. Not to anyone.

Q. What?

A. Not to anybody—oh, you mean before this?

Q. Oh, no; I do not mean before this, I mean——
A. Yes, as near as I can remember as I saw it.
Q. You say as nearly as you saw it?
A. No, as I heard it.
Q. Now, when was the first time that you told of this incident to anyone?
A. I told Mr. Hays of it.
Q. When?
A. Perhaps two weeks ago.
Q. Two weeks ago; to anyone else have you mentioned this?
A. I never have mentioned that conversation to anybody.
Q. Until two weeks ago?
A. Yes.
455 Q. Now, Mrs. Eames, how did you come to tell this to Mr. Hays?
A. Well, I had a luncheon one day and I very foolishly remarked to my sister-in-law who was there, Miss Drew,—in conversation this question of Miss Carrau came up; she was one of the party and she left before the others, and my sister and I sat talking and this conversation came up with regard to Miss Carrau and her claim to this estate and as I have since thought very foolishly, I said, "Why I have reasons to believe that she is fully entitled to it; I know enough to make me think she is fully entitled to everything," and Miss Drew it seems went home and repeated the conversation to her father who is my father-in-law by my former marriage, and he told Mr. Hays.
Q. Then did Mr. Hays call on you?
A. Mr. Hays called on me.
Q. And then you communicated these facts to Mr. Hays?
A. I did not. I was very angry at Mr. Hays and I fear almost rude.
Q. Well, when did you communicate these facts to Mr. Hays?
A. I should judge two weeks ago, not before that.
Q. Was that the first time that he called on you?
A. That was the first time that he called on me at the house. The first time he called he called when my mother was
456 there, my mother-in-law, and I was not in, and he came later and I saw him and told him I had nothing to say.
Q. But what I want to get at is when did you tell him what you did have to say?
A. About two weeks ago I say.

Mr. HAYS: I object to that method of questioning by the counsel: the witness has answered the question at least three or four times, and it is consuming time unnecessarily.

Q. And then how did you come to tell Mr. Hays; did he call on you more than once?
A. My father-in-law, Mr. Drew, went to Mr. Hays and told him I knew these facts, and Mr. Hays came to the house and I told him

I had nothing to say; I absolutely refused to do it, and asked him in just so many words where he got his information; that I had been careful to say nothing and did not know who had been meddling in my affairs. I was very angry and he told me that Mr. Drew had said so, and I went to see Mr. Drew and he——

Q. You have not yet answered my question, Mrs. Eames; did Mr. Hays call on you more than once?

Mr. HAYS: She has already answered it.

Mr. HOWE: Now, Mr. Hays, I am cross-examining this witness and doing it respectfully and do not want you to interrupt me. If you have any objections to make, interpose them, but do not interrupt me, please.

A. He called on me once, but did not call on me until about two weeks ago.

457 Q. Now, it was two weeks ago you told Mr. Hays?

A. Yes, sir.

Q. Now, if you were very angry with him two weeks ago, how did you come to tell him these facts?

A. Because my father-in-law, Mr. Drew, told me that I was not doing what I should do to my neighbor. Mr. Drew knew that I knew many things concerning this family. I am still intimate with my father-in-law's family, and he knew I knew Miss Carrau.

Q. Do you know whether Mr. Drew is working up the case for Miss Carrau in any way?

A. Why, certainly not.

Q. What?

A. Why, certainly not.

Q. You know that he is not?

A. I know that he is not.

Q. Now, when you communicated these facts to Mr. Hays two weeks ago did you tell him just the same thing as you have repeated here?

A. As near as I can remember.

Q. You never had told Doctor Eames?

A. Some of the conversation I have and some of it I have not.

Q. But you never have told him about this proposal of marriage?

A. I told him that I had overheard a proposal of marriage, I did not tell him the words, simply that I had. Doctor is as much opposed to my having mixed in the case as I was, but he finally gave his consent.

458 Q. Now, when did you first tell Doctor Eames that you heard the proposal of marriage?

A. Not until after the papers in the case had been filed.

Q. Which papers?

A. Until after—I do not say that that is right; I mean not until after the newspapers had aired the matter.

Q. Now, did you ever see this nuncupative will?

A. I never did.

Q. Now, you said you knew that it was not nine o'clock that you saw Mr. Sullivan the day of his death; it was after nine o'clock, was it?

A. Yes.

Q. Now, how much after nine o'clock was it?

A. Well, I should say between ten and eleven o'clock.

Q. Between ten and eleven?

A. Yes, perhaps half-past ten.

Q. Were you at all agitated yourself?

A. Well, most anybody is agitated to some extent——

Q. I know; but I say were you or were you not?

A. Well, it depends on what one calls agitated. I did not have a fit of hysterics nor did I cry.

Q. Well, were you excited?

A. I am not excitable.

Q. And you were not excited on that occasion?

A. I am not excitable—I was not excited; no, sir.

Q. Was Miss Carrau's sister excited?

459 A. To some extent, but not as much as she. They are very nervous, excitable people or—if anything unusual occurs, they are very much agitated.

Q. Was Mrs. Daussat excited?

A. To some degree, but not as much as the sister was. Miss Marie seemed to be the one.

Q. Who called you?

A. Miss Marie's sister.

Q. What is her name?

A. Hermance.

Q. Did you go immediately over?

A. As quick as I could.

Q. And in what room was Mr. Sullivan?

A. The front bedroom upstairs.

Q. Was that the room in which he slept?

A. I believe so.

Q. Now, what was his attitude; was he in bed?

A. He was in bed.

Q. And apparently had been reading the newspaper?

A. Apparently.

Q. Were there any breakfast things in the room?

A. None that I noticed.

Q. Was there a table there?

A. At the foot of the bed.

Q. Was it an ordinary table or was it a sick table?

A. Just an ordinary table. There was glasses laid on it, his watch, and I think a bottle or two.

Q. Well, as far as you could judge, had he arisen from bed that morning?

460 A. There was nothing to show that he had. He was in his night robe.

Q. And when you got into the room, who else was there?
A. No one, but Miss Marie.
Q. No one but her?
A. And the other two girls went right with me.
Q. They went with you or were they there when you went in?
A. That is, went right with me at the time. Mrs. Daussat and Miss Hermance Carrau and I entered the room at the same time.
Q. Miss Marie was in there?
A. Yes.
Q. And no one else?
A. No one else.
Q. Now, what did she say when you first went into the room?
A. I do not remember that she said anything. Her time was principally taken up in crying.
Q. In crying?
A. Yes sir.
Q. Was she crying quietly or was she crying in an excitable and loud manner?
A. Rather quietly, she was not making any great amount of noise. She wrung her hands and seemed very distressed, but was not screaming or making any loud outcry.
Q. You say you have been quite intimate there?
A. Yes.
Q. You know that Miss Carrau is a Roman Catholic, do you not?
A. Yes.
461 Q. Mr. Sullivan was a Roman Catholic, was he not?
A. I understood so.
Q Well, you knew him very well, did you not?
A. Not very well. I knew him by sight, and had a speaking acquaintance with him, merely, "How do you do?" I have known him by sight since a small child, or small girl.
Q. You do not know, but I mean you have no doubt that he was a Catholic, have you?
A. I have nothing to prove to me that he was a Catholic, except that I have heard people say so.
Q. But you have not seen him frequently enough to have formed any conclusion from your acquaintance with him?
A. No, oh, no.
Q. Miss Carrau had never told you whether he was a Catholic or not?
A. She had told me he was a Catholic.
Q. Prior to Mr. Sullivan's death?
A. Prior to his death.
Q. Then you did know he was a Catholic?
A. I did not——
Q. —From her statement?
A. From her statement—not from my own personal knowledge.
Q. Now, there was no priest there at that time, was there?
A. No.

Q. Had you been over to the house the day before Mr. Sullivan's death?

462 A. I presume I was, there was hardly a day I *am* not there.

Q. And how often do you think you go in and out every day?

A. I am usually there once a day, sometimes twice a day, sometimes oftener.

Q. Sometimes a dozen times a day?

A. Yes, sometimes, but it is unusual to be there a dozen times a day.

Q. Well, is it unusual to be there a half-dozen times a day?

A. No.

Q. Well, do you remember whether Mr. Sullivan was in bed the day before?

A. Only that they told me he was.

Q. No, but I mean, do you remember of your own knowledge that he was in bed?

A. I had understood that he was in bed for a week.

Q. For a week?

A. Or nearly a week before, that he had been quite ill and that the doctor had been going there.

Q. Did you see the priest visiting him?

A. No, I did not.

Q. If the priest had visited him, you would have been apt to have seen him, would you not?

A. Possibly, possibly not.

Q. I say you would have been apt to have seen him, would you not?

463 A. No, I hardly think so. It would just depend on whether or not I happened to be in the front part of the house. I do not spend my time in watching my neighbors.

Q. No, but the house is close to yours, is it not?

A. Yes, the house is close.

Q. You saw the doctor going in there, did you not?

A. Yes, sometimes.

Q. Just in the same way would you not have seen the priest going there?

A. I did see the priest going in sometimes, but I do not know that I always saw him.

Q. Before Mr. Sullivan's death, did you see the priest going there?

A. I do not know.

Q. Well, do you remember that you did not?

A. No, I do not remember that I did not.

Q. Now, Miss Carrau did not say anything about this will, did she, at the time you went and saw Mr. Sullivan dead?

A. Dead?

Q. Yes.

A. She told me just afterwards that he was to leave her everything.

Q. That he was to leave her everything?

A. That he was to leave her everything, after I had brought her downstairs.

Q. And what day was that?

A. The very day he died.

Q. Now, Mrs. Eames, how long had that telephone been in the house there?

A. Oh, I could not tell you.

Q. Been there weeks before Mr. Sullivan's death?

464 A. Oh, yes, a long time before Mr. Sullivan's death—before Mr. Sullivan ever went to the house, the telephone was there.

Q. Now, Mrs. Eames, on the night before Mr. Sullivan's death did Miss Carrau or anyone from that house send over to your house to call in Doctor Eames?

A. No, sir. Doctor Eames was not Mr. Sullivan's doctor.

Q. And you are positive that no one from that house went to your house to call in Doctor Eames?

A. Why, if they were—if they went there I certainly did not hear them, to my knowledge no one came to the house to call in Doctor Eames, nor at any other time during Mr. Sullivan's illness.

Q. And that night they did not go to your house to call you in did they?

A. No, sir.

Q. Now, when was it that Miss Carrau told you that Mr. Sullivan was going to leave her all of his property?

A. Within a very short time after he died.

Q. Yes, but how long after?

A. Perhaps half an hour.

Q. About half an hour?

A. Or an hour.

Q. An hour?

A. After we came downstairs, she told me in the parlor.

Q. Now, just exactly, what was it that she said, as close as you can come to it?

A. Why, I tried to comfort her; I said, "You must not grieve, Marie; he is an old man, and he has lived out his time and

465 it is useless for you to take on like this; you should not grieve this way," and she says, "You can't understand what it meant to me; it was everything to me." She said, "We were to be married and he was to have left me everything—everything was to be mine."

Q. Now, are those the very words that she said to you as closely as you can get them?

A. As closely as I can remember.

Q. You never have seen this nuncupative will, have you?

A. No, sir.

Q. Miss Carrau never showed that to you?
A. Never spoke of it to me.
Q. You do not know the color of the paper it is written on?
A. I do not know the color of paper it is written on.
Q. But did not Miss Carrau mention to you that she had written that will out?
A. She never did.
Q. Did she not mention to you that Mr. Sullivan between half-past eleven—between eleven and twelve o'clock the night before his death had said these words in the presence of all these people, and the next day she reduced it to writing?
A. She did not.
Q. And, Mrs. Eames, you want us to understand that Miss Carrau never did tell you that Mr. Sullivan had made that will, and that she had reduced it to writing?
A. She never did.
Q. Did you see Father Sweere there the next morning?
A. Yes, sir.
466 Q. About what time did he go there?
A. Sometimes in the morning, I could not tell you. I remember distinctly of washing off the porch with the hose and I saw Father Sweere enter the house when I was washing off the porch.
Q. About what time in the morning was that?
A. The same time I was around my household duties; it may have been ten o'clock, maybe eleven, I could not tell you positively. I simply saw him go into the house.
Q. Now, do you remember when Miss Carrau petitioned for letters of administration to be granted to Mr. McCutcheon on Mr. Sullivan's estate?
A. I remember of her putting in a petition—that is, I read it in the newspapers. I have read a great deal of what had been published in the newspapers.
Q. Did she talk that matter over with you at all?
A. No, sir.
Q. Never mentioned it to you?
A. Never mentioned it to me.
Q. Did she mention that she was a creditor of Mr. Sullivan's estate?
A. She never did.
Q. Do you know what compensation she was getting for teaching him?
A. I do not know whether she was getting any or not, I never knew.
Q. Now, how long was it after you heard this proposal of marriage before you mentioned the matter to anyone at all?
67 A. Not until—what matter, this proposal of marriage?
Q. Yes; when was the first occasion of your mentioning it?
A. I have no recollection of ever having mentioned the proposal

of marriage to anyone until I told Mr. Hays, other than I had informed my husband I had overheard it.

Q. Now, when was it, about what date was it that you informed your husband that you overheard it?

A. I could not give you the date, it was some time——

Q. I mean about.

A. It was sometime after this matter was aired in the newspapers.

Q. It was after that?

A. It was after that, after his death and after this matter was mentioned in the newspapers.

Q. After she had filed her petition, I presume?

A. I presume so.

Q. And then the next occasion was when you mentioned it to Mr. Hays?

A. To Mr. Hays.

Q. Now, in mentioning the matter to Mr. Hays, did he ask you the questions about it and you give the answers, or did you tell him——

A. I told him what I knew.

Q. Just as you have given it here?

A. Just the same.

Q. And that was because your father-in-law told you that was what you should do, was it?

468 A. That that was doing as I should be done by.

Q. Have you seen Miss Carrau frequently since Mr. Sullivan's death?

A. Yes; I have seen her quite often.

Q. Has your intercourse at the house been as frequent since Mr. Sullivan's death as before?

A. I hardly think it has.

Q. Well, in what degree has it lessened?

A. I do not go as often as I used to for one thing.

Q. Well, you have just as much use for the telephone now as you had at any time, have you not?

A. Yes, but since the new telephone has been put in, we have one of our own in the house—the new telephone.

Q. You mean the independent telephone?

A. I presume so.

Q. The new company?

A. Yes.

Q. But that telephone only has about three hundred subscribers has it?

A. That was the reason we never had one before, because it had too many subscribers. I had this put in for my own private use in catching Doctor at the office.

Q. And this is the reason you do not go over there so often?

A. That is one reason.

Q. You do not mean your intimacy there was simply an intimacy based on the use of the telephone, do you?

A. No, sir.

Q. You were personal friends, were you not?

A. We are yet.

469 Q. And you are just as friendly now as you used to be?

A. Quite as much so.

Q. And you are sure Miss Carrau has never told you about her reducing this nuncupative will to writing?

A. I am sure Miss Carrau has never spoken about her matters to me. That is the reason I have not gone to the house so often.

Q. Has Mrs. Daussat ever told you about this will?

A. No, sir; I have never spoken of this matter to any of the family. I have been most strongly opposed to being brought into the matter. It was with the greatest reluctance that I had anything to do with it, and I tried to guard against anybody knowing it or knowing that I had anything to do with it whatever, because it is most distasteful to me.

Q. Was your intimacy with Miss Carrau of a character that you were on what is called affectionate terms?

A. What do you mean by that?

Q. Well, I mean very close friendship?

A. We are very good friends. I am not—do you mean gushing? I am not the kind that put my arms around everybody and give them a kiss. I am not that kind of woman. I am not a gushing woman. I do not have that kind of friendships and intimacies with people.

Q. No, you need not be gushing, but were you on affectionate terms with them?

A. I am on very friendly terms with them, but I am not
470 on affectionate terms with anyone. It is not my way. I am not affectionate with everybody in general nor anybody in particular.

Q. And you have no friendship with women that can be called friendships of an affectionate character?

A. No, sir.

Q. None with any woman?

A. No, sir.

Q. Never have had, have you?

A. Not since I was a girl in short dresses.

Q. You eliminated such friendships when you put on long dresses?

A. Yes, sir; I learned wisdom.

Q. But to what degree then of friendship was your friendship with Miss Carrau, to what extent was it carried?

A. To the extent, they consulted me on most everything they thought I ought to be consulted on; to the extent I was in their house considerably. I presume they thought I was the best friend they had in Seattle, certainly the best in that neighborhood; I am called in if they are in trouble; we were the best of friends; they

came to my house freely and I have always tried to be just the best friend and neighbor to them anybody could.

Q. And you think they regard you as their closest friend in Seattle?

A. I think possibly so; yes.

Q. Now, are you positive that neither with Miss Marie Carrau, with Miss Hermance Carrau, with Madame Daussat or with

471 Mr. Daussat have you had any conversation whatsoever in regard to this nuncupative will?

A. No sir.

Q. Or with regard to this proposal of marriage?

A. No, sir.

Q. You are positive of that?

A. I am positive of it.

Q. And just as positive of that fact as you are that you heard the proposal of marriage?

A. Yes, sir, I am positive that I heard the proposal of marriage.

Q. No, no, I say, you are just as positive of one as the other?

A. Yes.

Q. Just as positive you had no communication with any of them——

A. Yes, sir.

Q. —As that you heard the proposal of marriage?

A. Yes.

ETHEL M. EAMES.

Redirect examination.

(Mr. HAYS:)

Q. At the time I called upon you to ascertain what you knew concerning Miss Carrau and the deceased John Sullivan, what was your interrogatory to me at that time?

Mr. HOWE: Objected to as incompetent, irrelevant and immaterial.

A. I asked you who had informed you that I knew anything about the matter, I believe, or words to that effect.

Q. You positively declined to give me any information concerning your knowledge of this case, did you?

472 Mr. HOWE: Objected to as leading.

A. I did.

ETHEL M. EAMES.

Subscribed and sworn to before me this 12th day of March, A. D. 1902.

[SEAL.]

——— ———,
U. S. Master in Chancery.

EBEN SMITH,
United States Master of Chancery, Northern Division.

Adjourned.

SEATTLE, *March* 11, 1902—2 o'clock p. m.

Present: The master in chancery. Mr. Howe, of counsel for the complainant-. Mr. Hays, counsel for the defendant-.

The witness, Mrs. EAMES having heard read the foregoing testimony:

The MASTER: Mrs. Eames, you desire to make a correction on page 33 in your answer to the inquiry, "Now, Miss Carrau did not say anything about this will, did she at the time you went and saw Mr. Sullivan dead? A. Yes, sir, she told me just afterwards that he was to leave her everything." Do you desire to make any correction? If so, please state it.

A. To change the word "leave" to "give," wherever it appears.

(Mr. HOWE:)

Q. I desire to ask her a question: What makes you now think that you said "give" instead of "leave"?

473 A. I would not say positively that I said "give," but my understanding of the matter was that Mr. Sullivan was to give Miss Marie the property when they were married, that there was no question of le-ving it to her, but to give it to her.

Q. Well, but what makes you now think that Miss Carrau used the word "give" instead of "leave"?

A. As I understand what she said to me at the time that he was going to give me everything, she positively stated that. I did not understand that it was contingent upon Mr. Sullivan's death, that there was no question of death entering the question, that when they were married that he was to give her everything.

Q. That is, everything that he had?

A. Everything that he possessed in the way of property and money.

Q. Now, have you thought over this testimony?

A. It never occurred to me until I read it here.

Q. And the fact that in putting the question to you I used the expression leave, does not make you think that you probably used the word leave instead of give?

A. I did not think of the matter. It occurred to me when he read it to me leave, it did not sound right, and I have thought of that as give.

Q. Now, when I call your attention to the fact that I put this question to you "that he was to leave her everything," and that you answered "that he was to leave her everything after I had brought her downstairs." Now, I say does the fact that I used the

474 expression leave make you think that you did use the word leave when you gave your testimony the other day?

A. It is possible that that is the reason I used the word leave, if I did use it, I do not know. I could not state positively that I said

leave or give. If I said leave, I meant give, as I certainly have always thought of it as give.

(Signed) ETHEL M. EAMES.

(Mr. HAYS:)

Q. Now, Mrs. Eames, your answer to the present question or the correction which you have now made seems to purely show that you did not intend to answer the question propounded. The question which was propounded to you by Mr. Howe was "Now, Miss Carrau did not say anything about this will, did she, at the time that you went and saw Mr. Sul-ivan dead? A. Dead? Q. Yes. A. She told me just afterwards that he was to leave her everything." What relation or relevancy had her statements to the will as you understood her answer?

A. She did not ask anything about a will.

Q. Then your answer was not intended to convey the impression to Mr. Howe, the questioner, that Miss Carrau referred to any will at all?

A. She did not mention a will.

Q. She simply said to you what you have stated and that Mr. Sullivan was to give?

A. They were to be married and he was to give me everything.

475 Q. You have formerly stated that in some portion of your testimony as I recollect it and it was her statement that they were to be married and he was to give her everything?

A. Yes, sir, he was to give her everything.

Q. And that is the correction you desire now to make and have in this record?

—. Yes, sir.

ETHEL M. EAMES.

Read over to the witness by me, by her subscribed and sworn to before me this 12th day of March, A. D. 1902.

[SEAL.] EBEN SMITH,
United States Master in Chancery, United States Examiner and Special Commissioner.

Afternoon session.

Present as at morning session,

At the request of counsel for the defendant- the further hearing of testimony was adjourned until tomorrow, morning, March 6th, 1902, at 10 o'clock a. m.

SEATTLE, *March 6th*, 1902—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.

Present: The master in chancery. Mr. Howe and Mr. Farrell, of counsel for the petitioners, Mr. Hays, counsel for the defendant-.

476 Miss MARIE CARRAU, one of the defendants, being first duly cautioned and sworn, testifies as follows:

Mr. HOWE: Now, at this time, counsel for complainant, called the attention of the master to the fact that Miss Carrau, the sister of Miss Marie Carrau, and Madame Daussat, are present in the room. Over in Ireland, the solicitors for Miss Carrau made a motion that all witnesses other than the witness testifying, who is sworn in behalf of the complainant, should be excluded from the room, and counsel for the complainant will now move that all witnesses other than the witness testifying be excluded from the room while the testimony is being given. I will further state that in Ireland that course was continued with the witnesses and they were all excluded from the room, and the record will so show.

Mr. HAYS: Counsel for defendant can see no relation whatsoever to the case suggested by the counsel when in Ireland, that being merely the taking of depositions upon the commission issued out of this court. The present hearing being an actual trial at which all witnesses are expected to attend and be present. On the part of the defendant there is no objection whatsoever to the exclusion of the witnesses, but it would seem contrary to the rules of this court heretofore adopted by the court, either in this kind of a case or in any other, that counsel has any recollection of. If the master or special commissioner shall indicate his belief that it would meet with the approval *with* the trial judge to have these witnesses separated, the defendant, of course, will accede to the suggestion.

477 The MASTER: The rule in the master's office is similar to the rule in the trial court, and whenever the request is made and whenever it has been made in this court the master or examiner has always observed the request, and while it does not indicate anything further than that the motion is sustained and the witnesses will be excused from the room.

(Mr. HAYS:)

Q. State your name in full.
A. Marie Carrau.
Q. You are the defendant?
A. Yes, sir.
Q. Named in this case?
A. Yes, sir.
Q. Where do you reside?
A. I reside in Seattle at 1417, Seventh avenue.
Q. How long have you resided there?
A. Nine years.
Q. Where were you born?
A. In France.
Q. What year?
A. In the year 1875.
Q. When did you arrive in America?

A. I arrived in the year 1890.
Q. With whom did you come to America?
A. My father and my two sisters.
Q. Is your father living or dead?
A. No, he is dead.
Q. When did he die?
A. In 1893 on the fourth of June.
Q. Where was he residing at the time of his death?
A. In the same house.
Q. Where you are now residing?
A. Yes, sir.
Q. Was your father a naturalized citizen?
478 A. Yes, sir, he was. I have his papers at home.
Q. What has been your profession of vocation since you arrived of age?
A. Well, teaching French.
Q. Teaching the French language?
A. Teaching the French language, yes.
Q. Where have you taught?
A. In Seattle.
Q. Give us the names of some of your pupils?
A. Mrs. Burke, Mrs. Prooch, Miss Cann—she was my first pupil, Judge Cann's daughter—and Doctor Conn's daughter.
Q. You have taught my daughter?
A. Yes, sir, I have taught your daughter and wife.
Q. Now, Miss Carrau, were you acquainted with the deceased, John Sullivan?
A. Yes, sir, I was.
Q. When did you become acquainted with him first?
A. On the 31st day of July.
Q. Of what year?
A. 1900.
Q. Where was it you became first acquainted with him?
A. In the house, in my house.
Q. Where you now reside?
A. Yes, sir.
Q. Under what circumstances?

Mr. Howe: Counsel for complainant objects to the witness testifying to any communication or transaction had by her with John Sullivan on the ground that the same is incompetent, irrelevant and immaterial and in conflict with the statutory provision on the subject of communication and transactions between the party
479 claiming as heir of the deceased person or devisee or legatee of the deceased person.

A. He came for the purpose of learning the French language or boarding with us—learning the French language, for that purpose.
Q. Well, now, Miss Carrau, state what you did about teaching the French language to Mr. Sullivan.

M-. HOWE: It may be stipulated that the same objection runs to every question on this subject.

Mr. HAYS: Yes, sir.

Q. Did you teach him?

A. Yes, sir, I taught him for awhile.

Q. Now, just state fully.

A. Oh, well, I taught the language a little and then he began to court me, and it was about, I think, a few days, I think it was just a week that he made me understand—the first thing he said to me—he was in the habit every morning to open up his windows so as to have air after he got up, and he went down to the parlor, so as to have air, and I would come to the parlor after breakfast, and I would give him his lesson, and the day before I caught cold—the day before he spoke his words—I was going to explain to you that I got cold and he said then he got up and he went to the window and shut the windows and says, "I shut the window on your account; you caught cold yesterday." Well, I says, "Yes," and he says, "Well, I don't want you to catch cold and I will shut them at least until you get through the lesson," and I saw how unselfish he was, and he says, "If you will let me, I will take good care of you." I did not answer anything, of course, and made believe that I did not understand what he meant; I did not say anything, and the lesson went on. Now this was the first day. Now, another day, I do not know how it came, but it seemed a little hard for him to learn French, and he says, "I am not going to trouble myself very much about French anyway; we will learn French together, anyway." So that *that* day, well, I could not tell the exact day, but some other day he spoke about having met a friend in the street and that friend had told him, "I know Mr. Sullivan that you are learning French," and he says, "Yes." Well, he says, "The best way to learn French is to marry a French girl," he said to me. Well, then, I did not say anything, I just smiled and he says, "Yes, I think that will be a good way, and then I will not have — trouble myself about learning; it will be just a pleasure and not a labor." Well, some other day he had met a man on the boat when he came from France, and he had been asking people over there that had been learning French and asked the best way to learn French. And when he first came he told me that when he was on the boat he had asked a good many people about the way to learn French, and he had met some one that was coming over here to learn the English language, and he told me that he had been studying French and he gave him the name of the book that was a very good system, the system that I used, and gave him the name of another book. He bought those books in New York. Now, that was the first day that he came home that he spoke to me about these two men telling him, and he told me that there were other men telling him that the best way to learn French was to marry a

French lady—a French girl. Then he told me it was on the boat they had told him about that when he came home. On that day he told me that he came in the house for that purpose, came in my house for that purpose. Then he came to courting me, you know, and giving attentions to me, and always carried me an armchair from the dining-room, to the parlor, and all these little attentions that I cannot remember. After that, on the first of September, I was just coming from church—I remember it well. I was just coming from church—always on Saturday, the first of the month, I go to church in preparation for the first Sunday, and I was just coming from church, and Mr. Sullivan—I was coming down from Seventh avenue and he was coming from Pike and we met at the gate.

Q. On Seventh avenue, was he?

A. Yes, sir; we met at the gate and he opened the gate for me, and we went in the house and we sat down and I was going to give him a lesson, but he said, "No, I don't feel like taking a lesson at all; I am going to chat with you and have a serious talk with you." Of course, I knew what was coming, and then he asked, he told me we had made everything so pleasant for him and so quiet and so smooth, and everything was so lovely, and he had always lived in hired rooms and in his office, and never had a home of his
482 own, and he did not know what a home was, and he thought it would be very hard—it would be very hard for him to part with that one. I said, "Mr. Sullivan, you do not need to part with it, we want you to stay with us; that is what we want." "Oh," he says, "I could not do it, unless you will consent to be my wife." He says, "I am going back to France and I want to take you with me." "Mr. Sullivan," I said, "I will think the matter over—you take me by surprise and I will consult my brother and my sister and I will give you an answer," and he says, "How soon will you give me an answer?" and I says, "In a week I will give you my answer." He says, "Cannot you give it now? You know by this time what kind of a man I am." "Well," I says, "I will let you know next week." I says, "I know you. I have heard a great deal about you, and I know everyone esteems you very highly, but I want to consult my brother." And he says, "That is all right; so then next week you will give me your answer?" and I says, "Yes, I will." So then he told me about his business—he had told me before a great deal, but then he told me that he had always had a good—his temper was good and was never bad, even when the times was so hard and everybody was complaining, he never complained. That he had a very strong constitution, that he was never sick in his life, and never was laid down with sickness except—never since he was a man, ever since he — remember.
483 And then he told me that he had plenty of money, almost money to throw away. And he told me what his building brought to him, and what the income was. And he showed me a letter and told me about his sister's estate, that he

went back to Ireland for, about one hundred and fifty pounds, or something like that, and later he got a check and he showed me a check, the check he got from Ireland, and he told me—he took it twice from his pocket and he told me to be sure to remember the name of the bank that it should be checked. I did not seem to pay much attention to it, so he took it twice from his pocket for me to read. Then he told me all about what he had done in Ireland, of the friends he had visited and other persons that he had gone to see in Ireland, and he told me everywhere he had gone and in France and everywhere. Now, he told me the money that he took to France, and he showed me the letter of credit and what was left of that money that he took—he took $6,000 and he had 24,000 francs left over in the bank. He told me about his relatives, that he had no relatives.

Q. That he had no relatives?

A. No relatives, no one to leave his property to, and if I consented to be his wife that he would leave me everything, everything that he possessed with the mines, because he had no one to leave it to.

Q. Now, what occurred with reference to this proposal of marriage, later on, if anything?

Mr. Howe: I renew my former objection.

484 A. On Saturday next he asked me——

Q. State what occurred?

A. On Saturday about four or five o'clock—I cannot remember what time it was—he asked me—he came in the house as he always did and then he asked me to give him my decision.

Q. Your decision?

A. Yes, my decision. Then I told him that I had consulted my brother, and that my brother had said that he thought it was all right and he knew Mr. Sullivan and had heard about Mr. Sullivan, and that he was very well known here, and that he would advise me very strongly to marry him. Of course, I had the greatest esteem for him and that I consented—I gave him my consent too.

Q. What conversation did you have with him on this Saturday, what did he say to you?

A. He said to me, "Now, it is the time to give your decision; are you going to give it to me?" I said, "Well, yes; I consulted my brother and sister, and especially my brother, and he told me that he knew you well and you were respected and esteemed here, and that he thought that you had plenty of money——"

Q. I asked you all that Mr. Sullivan said to you before you gave your answer on that last meeting, all that he said concerning himself and his property.

A. There are things that I may have forgotten.

Q. I only ask you to state fully what Mr. Sullivan said at
485 the time of your last meeting and I want to know all that he said the second time when you made your final engagement of marriage.

A. He told me that he thought a great deal of me, and that he loved me dearly and that he would will everything to me.

Q. I did not ask you about the occasion of his death.

A. No. If I would consent to marry him everything will be mine, if I consent.

Q. Go ahead; then what took place next, if anything?

A. Well, I don't know; we talked a great deal about his business and about our plans, what our plans will be.

Q. Did you at that time, Miss Carrau, give your consent to become his wife?

Mr. Howe: I object as leading.

A. Yes, sir; I told him that I consented and that my brother strongly advised me to decide that I give my consent to it.

Q. When was this?

A. It was on Saturday.

Q. What day of the month and what month?

A. It was the 8th of September.

Q. What year?

A. 1900.

Q. When was Mr. Sullivan taken ill?

A. He took to his room on the eighteenth of September,

Q. Was he complaining of illness before he went to his room?

486 A. Yes, a little, he was complaining of short breath.

Q. Prior to his going finally to bed?

A. Yes, sir.

Q. Did he after the 18 of September leave the house and go out anywheres?

A. No, never.

Q. Are you not mistaken—did not he have a consultation with his physicians in his office, or did he?

A. That was before the 18th.

Q. On what day was that?

A. On Sunday the sixteenth.

Q. On the 16th?

A. On the 16th.

Q. Are you sure it might not have been on the 17th?

A. No, it was on the sixteenth; I remember every date just as it is, now.

Q. Now, Miss Carrau, during his illness who attended him and nursed him?

A. I nursed him and Doctor Carmen attended to him.

Q. As his physician?

A. Yes, sir.

Q. Do you know who these consultations of the physicians were held by?

A. Yes, sir; Doctor Lyons and Doctor Bondberg and Doctor Carmen.

Q. Do you know what they pronounced his ailment or malady to be?

Mr. Howe: I object as incompetent, irrelevant and immaterial and hearsay.

487 A. He told me that they said his left lung lacked air, you know, and pressed on his heart, and that gave that shortness of breath, and they gave medicine to him to get air to the lungs.

Q. Now, you administered his medicine as directed you by this physician, Doctor Carmen?

A. Yes, sir.

Q. State what, if any, conversation you had with him or he had with others in your presence at any time prior to his death?

Mr. Howe: I renew my last objection.

A. He had no consultation with any one before me—what do you mean?

Q. What happened between the time he took his bed and finally died; what occurred in his presence, and your presence, if anything?

A. Nothing at all.

Q. Any one else ever in his room but you?

A. Yes, of course, the doctor and Mr. Littell visited him twice.

Q. Mr. Littell?

A. Mr. Littell called to see him but did not stay but a little while but I was not in.

Q. Now, Miss Carrau, what did Mr. Sullivan say do prior to his death, if anything, concerning his engagement with you?

Mr. Howe: I renew my last objection.

A. Well, it was the same to me——

Q. Anytime?

488 A. Well, I nursed him. I was there almost day and night. I did not stay in the room all the time, but I went out every two or three minutes, and then I gave him his medicine and sometimes he was sitting up and sometimes he was in bed, but he was sitting up most part of the time. He ought to have stayed in bed but he could not.

Q. Did he have his own furniture in the sickroom?

A. His own furniture.

Q. Did he have an easy chair?

A. He had two armchairs, two leather armchairs and one wooden one, three armchairs.

Q. What other furniture did he place in that house?

A. He had a carpet in his room and a table and a wardrobe.

Q. Did he put down any carpets about the house?

A. Yes, sir; he gave us the stair carpet, a beautiful stair carpet.

Q. When did he do that with reference to his coming to the house.

A. He did that on the fifth of August.
Q. On the 5th of August?
A. Yes, sir.
Q. Now, he made your folks a present of that?

Mr. Howe: I object as leading.

A. Yes, sir.
Q. Did you have a carpet on the stairs before that?
A. Yes, sir; quite a nice carpet, but not so nice as his; and he had brass hooks to keep it in place put it. He could not
489 get them at Frederick & Nelson's and so he went to McDougall & Southwick's to get some of these brass guards.
Q. Now, state all that occurred prior to his death, if anything.

Mr. Howe: I renew my last objection.

A. The night before he died, about eleven o'clock I think, he told me to call my brother and my sister and the family, and I went to the rooms—and he wanted to see them to speak to them, and I went to the hall and called down the steps and called my brother, for them all to come up, and they ran up stairs quite excited, and I told them that Mr. Sullivan wanted to speak to them, and then they came in the room and Mr. Sullivan spoke to them these words, "I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick, very sick, and I do not know what might happen."
Q. What further was said?
A. My brother said—I think my brother or sister said, "Thank you," and they walked away. They went out.
Q. Did you go out?
A. No, I remained for a little while. I remained about five or ten minutes. I could not say—I could not speak a word. I could not have spoken a word to save my life. He did not speak;
490 he seemed very much exhausted and still; I told him that I was going to get some warm milk for him. He was very weak and he was breathing very heavily, so I thought some milk would do him good and help him. I went downstairs and had a little milk warmed for him and then I came up again and I found him in bed and asleep; he had gone asleep.
Q. When next did you talk with him and what did you do—did you wake him up?
A. No, I did not wake him up. The doctor had told me to let him sleep if he wanted to sleep.
Q. When did you give him his medicine?
A. I was going to give it to him at two o'clock in the morning. I gave the medicine every six hours, but he was asleep, so I did not arouse him.
Q. Were you in to see him at two o'clock in the morning?

A. Oh, yes, I was in all the time there, you know—almost every five minutes, I went in.

Q. Now, did he continue to sleep on from that?

A. Yes, sir, slept all the time.

Q. Now, in what way was he sleeping—heavy, deep sleep?

A. Yes, sir, very deep, it seemed to me, but breathing very heavy, always very hard. He was breathing pretty hard, kind of a drowsiness more than anything else, I thought.

Q. What do you mean by drowsy?

491 A. Well, sleeping, not being able to speak or do anything.

Q. Now, when he woke up, if he woke up again?

A. Well, I went to bed—I did not go to bed, but I retired to my room.

Q. The adjoining room?

A. Yes, sir.

Q. Who was rooming with you, if anyone?

A. My sister, in the same room, and I retired then, but I did not go to bed, but just put my morning wrapper on and laid down on the bed. I could not go to sleep. I tried to read but I could not read very well. I could not read at all. I listened for him and I heard no noise in the room only that he seemed asleep and quiet. I did not hear him moving at all. So I stayed in bed for quite a while and then I went asleep, and I think I slept although my sleep was so disturbed, and then I went to his room at seven o'clock, at about seven o'clock, but he still slept, but I roused him.

Q. You then roused him?

A. Yes, sir, but he did not seem to rouse at all.

Q. Did not seem to talk?

A. No, he did not seem to be able to answer or to do anything. I told my sister to bring his breakfast and try to have him take some little breakfast. And she brought breakfast. She always did. She brought the tray and I tried to feed him, to give him some egg—he always ate soft egg—and I brought one in a glass and tried to put a spoonful in his mouth, but he did not want it, he could not

492 swallow it. And so I fixed the bed and I fixed everything in the room to make everything straight for the doctor when he came, and it took a little time, and then I went to my room and I came in the hall, and he did not seem to wake up and he did not wake up. At about eight o'clock—I think it was about eight o'clock—I asked him—he seemed to rouse a little, then I says, "I am going to give you some beef tea, that may help give you strength," and I had given him beef tea quite often. The doctor had told me to.

Q. Some that you made yourselves?

A. Oh, yes, we would not trust anything but what we made ourselves, and he says, very weakly, he says, "I do everything you say," and that is his last words to me.

Q. Well, what did he do then?

A. Well, then I went downstairs and warmed the tea and then I

ran upstairs again, and when I opened the door I found him—I did not know that he was dead, but I saw that his eyes were steady and I went up and tried to revive him. I thought that he had fainted and then I tried to revive him and chaffed his hands and tried to give him—he had dropped his head that way—and I tried to lift up his head, and when I lifted it it dropped again and he seemed to look at me with a pitiful look, and I do not know that he was dead, but I thought maybe there would be a chance to revive him. When I saw that I could not do anything for him then I ran downstairs and I first said, "My God! my God! he is dead." And then I ran downstairs and called my sister. And my sister said he
493 was dead, and I says, "Don't say that to him; he may still be alive and hear you." I could not believe that he was dead; it was impossible for me to believe it, and I went to him and told my sister to bring some vinegar. We always do that in France, to make them smell vinegar when they are fainting, but he was not fainting; he was dead. Then my sister called Mrs. Eames and my sister asked her what to do, and she said, "I will call the doctor," and I went downstairs and I knew the doctor's telephone number and I called for the doctor, and Mrs. Eames came and spoke to him because I could not understand what he said, and I went upstairs to him again.

Q. Did Mrs. Eames then talk over the 'phone to the doctor?

A. Yes, sir, she talked over the 'phone to the doctor.

Q. Go ahead.

A. And then we waited for quite a while before the doctor came, and the doctor came with Mr. Littell, and they all came together and they came upstairs, and the doctor, Doctor Carmen, saw that he was dead, and he said that he was dead. And then he told Mr. Littell to come up, and then they opened the wardrobe, and they searched his pockets, and they took all that he had in his pockets, and they took his watch and that was lying on his table, his watch and his eyeglasses, and then they telephoned for the undertaker.

Q. And then later what was done with the body?

A. And then the body was taken to the undertaker's and I was in the room, and Mrs. Eames took me down, and I just knelt near
494 his bed and I put my head on his breast and cried all I could, and then Mrs. Eames took me down and she tried to console me. She says, "Marie, don't cry," she says, "because he has outlived his life and I never feel sorry for old people that die." And I says, "Mrs. Eames, you don't understand what Mr. Sullivan was to me. We were engaged to be married and I was going to France with him and you don't know; it was a great loss for me." And she spoke to me for a long, long time, and she says, "It must be a consolation that you did everything that you could for him, that you took care of him, that he died happy, that you made him happy," and she says, "it must be a consolation to you."

Q. Now, the night before his death when he spoke these words that you have detailed, what did you do that night, after the folks

had gone down and you remained, what did you do about going down?

A. I went down and I took a pencil and a scrap of paper, and then I wrote down the words just as he said them to me.

Q. Now, did you, when you wrote these words down, inform your brother and sister anything about having written them down?

A. No.

Q. Where were you when you wrote them down?

A. I was downstairs, in what we call the sitting-room and I opened the desk, the writing-desk, and I wrote the words.

Q. At your writing-desk?

A. Yes, sir.

Q. What did you do after his death and removal from the house, if anything?

495 A. Well, I told my brother and my sister, after the body was removed, then I showed to them what I had written down and I asked them if they were the exact words that Mr. Sullivan had said. Then they said, "Yes, these are just the exact same words." Then I had them to sign.

Q. Then you had them sign?

A. Yes, sir.

Q. You all signed it?

A. We all signed it.

Q. Now, what did you do about communicating, if you did communicate these facts to anyone, who did you communicate them to first and when?

Mr. HOWE: I object as incompetent, irrelevant and immaterial.

A. Oh, I told Father Sweere.

Q. When and where?

A. It was in my house just after poor Mr. Sullivan died.

Q. Do you remember the time of day it was?

A. It was in the morning.

Q. What did you tell Father Sweere?

Mr. HOWE: I renew my last objection.

A. I told him of the will, the words just as they were, and I requested him to have the kindness to go and see a lawyer for me and ask if that was a good one. Then he went, I think, and asked Mr. Kelleher, and Mr. Kelleher said it was not a good will.

Q. You need not state what he said to Mr. Kelleher, but state what he said to you?

496 Mr. HOWE: I renew my last objection.

A. He came on Saturday, the 29th, Father Sweere, and told me what he had learned, that the will was no good, that the oral will was no good.

Q. Had Mr. Sullivan been buried then, when Father Sweere called?

A. When he called the last time, he had been buried.

Q. When was he buried?

A. He was buried on Friday, at nine o'clock in the morning.

Q. Now, what did he do, if anything, further with reference to Mr. Sullivan's estate?

A. Then I went to my brother and requested him——

Q. What did you next do? State chronologically—state the order, what was afterwards done?

A. Of course, when Father Sweere told me that the will was no good I was very much discouraged then, and Mr. McCutcheon asked my brother to sign——

Mr. HOWE: I object to what was said.

A. To sign a petition. He told my brother first——

Mr. HOWE: I object to any conversations or any statements made either by Mr. McCutcheon or Mr. Daussat, on the ground that they are hearsay and incompetent, irrelevant and immaterial.

A. He told my brother, first, that he wanted to take out administration for himself, for my brother, and then he told my brother, "I will see you again," and then the next day—I think it was the next day; my brother knows more about it—I will not say
497 when it was, because I do not remember about it, and he met Mr. McCutcheon and told him that he wanted administration for himself, so he asked my brother to have my sister sign the petition for him.

Q. Your sister—that is his wife?

A. Yes, Mrs. Daussat. So that day it happened that I was down town and I went to see my brother at the restaurant, and my brother told me that Mr. McCutcheon wanted me to sign a petition for him to be appointed administrator, he wanted Augustine, he spoke about his wife, he wanted her to sign it, and I says, "She has no time to come. I am here and we will go and sign myself." And he says, "Will you come and sign?" "Yes," I says, "certainly." Then we went to Mr. McCutcheon's and he asked Mr. McCutcheon if it would be the same for me to sign, would be the same as my sister.

Q. His wife?

A. Yes, sir. Mr. McCutcheon, he says, "Oh, yes," and so I signed.

Q. What conversation, if any, did you have with Mr. McCutcheon at that time?

Mr. HOWE: I object as incompetent, irrelevant and immaterial.

A. I told Mr. McCutcheon that I was engaged to Mr. Sullivan.

Q. State the conversation.

A. I told him he asked how long he had been sick and if he died suddenly, and then I told him, "No, he had been nine days
498 in his home and I had nursed him and took care of him, and I told him what he had told me about his estate and about

his own affairs, and I knew everything—I knew more in two months than people who had known him twenty years; that he told me every thing, and then I told him that I was engaged to him. And Mr. McCutcheon said, "I guessed it the way you spoke to me, before you told me."

Q. What else did he say?

A. Then my brother said——

Q. Did Mr. McCutcheon say anything else?

Mr. HOWE: I renew my last objection.

A. Then he told me, "Then you are married to Sullivan?" I says, "No, I am not married." "Well," he says, "I hoped that you would tell me that you were married." And I told him, "No, he died too soon." And then I told him, my brother told him, that there was a will in my favor, he believed there was a will in my favor, and then Mr. McCutcheon says they had not found any will, and I says, "They may have destroyed it."

Q. You said——

A. Mr. McCutcheon said, "Did they have any interest in destroying it—they would have no interest in destroying it?"

Q. Now, did you read the petition to have him appointed administrator at that time?

A. No, I did not read it.

Q. You knew nothing about what it contained?

Mr. HOWE: I object as leading.

A. No.

499 Q. Except that they told you it was a petition to have Mr. McCutcheon made administrator?

Mr. HOWE: I object as leading.

A. Yes, sir.

Q. For the purpose of taking charge of the estate and property?

Mr. HOWE: I object as leading.

A. Yes, sir. He said some one had to be appointed to take care of the estate.

Q. You knew there was no one, no agent that had any authority to take care of the property after his death.

Mr. HOWE: I object as leading.

A. No.

Q. What did you next do, if anything, with reference to an endeavor to find a will?

A. When Mr. O'Brien was appointed I told my brother to go and see Mr. Littell to ask him about—that he believed that there was a will, and to publish that will, and he said they had not found any will, but my brother thought from what Mr. Sullivan told him that Miss Carrau was engaged to Mr. Sullivan, to tell what Mr. Sullivan

told me the night before he died and then Mr. Littell did not give him any good answer.

Mr. Howe: I object as incompetent, irrelevant and immaterial.

A. (Continuing:) So my brother went, I told my brother to go——

Q. After your brother came home he told you?

500 A. Yes, sir.

Q. Just give that statement exactly as it occurred from time to time—do not give the reasons, but just give the details of the facts.

A. Then my brother went home and told me the result of his steps, and then I told him to go and see Mr. Howe and Mr. Piles—that was the firm—and to ask them to produce the will, and then my brother told Mr. Howe the same thing that he told Mr. Littell, but they told him that they had not found the will and that the will was to be found, but they could not do anything for him; something like that.

Q. What next did you do?

A. Then my brother came again and told me that he had not succeeded at all. Then I thought the matter over and I was quite discouraged, and then I remember Mr. Burke, I knew there was nothing was the matter—Judge Burke, I had known him quite well through his wife—I told my brother to go and tell Judge Burke about it, and he went down there, but it was the same thing, he told Judge Burke the same thing.

Mr. Howe: I renew my last objection.

A. (Continuing:) Judge Burke said he did not think, he says, "I do not know if he told him the will was not good or not," but he told him if he could find the will then he would help him.

Q. State what then you did, if anything, with reference to the discovery of the will.

501 A. Then I let the matter rest for a while. Well, then I thought about it. I remember I talked to your wife and then I told my brother to go and see you.

Q. To go to see me, Attorney Hays?

A. Yes, sir, Attorney Hays, and my brother and you; he had known you for five or six years, and I told him to go to you and to make an appointment, to find you and see if you could do something for me. Then he went to you and asked for you——

Mr. Howe: I renew my last objection.

A. And he told what he had told the other lawyers and told you that——

Q. Now, just state.

A. Then, he made an appointment with you, and then you told him that that will——

Q. Now, who made the appointment?

A. He did.

Q. For when?

Mr. HOWE: I renew my last objection.

A. For the same afternoon.
Q. Now, just state exactly what occurred on that afternoon.
A. That afternoon, then I came down with my brother and I told you exactly what it was then.
Q. You said what, you told me what?

Mr. HOWE: I renew our last objection.

A. I told you that the night before Mr. Sullivan died that he called all the family, he told me to call all the family to come. Then I called them and they came upstairs, and they came
502 in the room, and Mr. Sullivan spoke to them and told them, "I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the property of your sister Marie Carrau," and he pointed to me. That is what I said.
Q. What did I do?

Mr. HOWE: I renew my last objection.

A. Then you said that will was as good as a written will, as if it was written with letters of fire. Then you opened a law book and you read the law.
Q. I opened the law book and read the law to you at that time?
A. Yes, sir.
Q. Now, Miss Carrau——
A. (Interrupting.) Then I told you that I had put down that will, and you told me to bring that paper and to bring my sister along so that you would know what they know. Then we went the same afternoon and I brought you the original copy—copy of that will.
Q. The copy of the words that he had spoken to you?
A. Yes, sir, the copy of the words that he had spoken to us. Then you explained it to us about the law, how that was good and there are many thing- that Mr. Sullivan told me that I could not remember. When he told me that he had ten years in his life by coming to my house, and that before that he did not know what to do with himself, the time was so long, the time seemed so that he did not know what to do with himself. He had only known me about two months before—sometimes he would talk about
503 the days how they would drag along so that he thought that he would go to a farm and do some manual work, and that now the time was short and that he had just time to go to his office and come to me and everything was lovely, and he was as happy as he could be. Then he told me when he went to France that he had a picture on his building, his block taken, and if something happened to him that they would know who he was, but he says, "Look here, if I live or die." Now, that was when he first came.

Now, another time he told me that again, he says, "Now, I know some one will care if I die, some one would care and mourn for me."

Q. Anything else you think of that occurred between you and Mr. Sullivan?

A. I do not think of anything now. When I am home I remember many things.

(Signed) MARIE CARRAU.

Cross-examination.

(Mr. HOWE:)

Q. What place in France were you born?
A. I was born in Merang.
Q. That was in 1875?
A. Yes, sir.
Q. What day of the month?
A. It was the 12th of April.
Q. The 12th of April, 1875. Are your sisters older than you are?
A. Yes, sir.
Q. What are the ages of your sisters?
A. My sister is two years—one is two years older and the other is five years older.

504 Q. Madame Daussat is the oldest, is she?
A. Yes, sir.

Q. How long have you been living where you now live?
A. Nine years.
Q. What is Mr. Daussat's business?
A. Restaurant-keeper.
Q. Where?
A. The Occidental café, the Seattle hotel.
Q. How long has he been keeping that restaurant.
A. As far as I remember, two years.
Q. What did he do before that?
A. He had another one, the Paris restaurant.
Q. Where is that located?
A. In the Pioneer building, on Cherry street.
Q. On Cherry street?
A. Yes, sir, between First and Second.
Q. How long did he keep that one?
A. I think it was two years; I cannot remember.
Q. What did he do before that?
A. He was manager in several restaurants.
Q. What ones?
A. Once at the Stevens, and I think at the Horseshoe café.
Q. His wife is named Augustine, is she not?
A. Yes, sir.
Q. What are Mr. Daussat's hours at his restaurant?
A. I think between six and seven.
Q. What time does he leave the restaurant at night?

505 A. Sometimes—never before half past eight, but sometimes later.

Q. Sometimes later?

A. Yes, sir.

Q. How late is the latest that he ever leaves the restaurant?

A. Well, on Saturdays it is about nine o'clock.

Q. Is it an all-night restaurant?

A. Yes, sir, open all night, but he does not stay there at night.

Q. Does he ever stay there all night?

A. No.

Q. Some one else runs it at night?

A. Yes, sir.

Q. Now, what was the first day that you met Mr. John Sullivan?

A. On the 31st of July.

Q. That is the first time that you ever saw John Sullivan.

A. Yes, sir.

Q. The 31st of July, 1900?

A. Yes, sir.

Q. Where did you first meet John Sullivan?

A. In the house.

Q. In what room?

A. In the parlor, the front parlor.

Q. Who was present at that time?

A. My two sisters were present.

Q. What time of day was it?

A. It was in the afternoon.

Q. About what time?

A. About two o'clock, I think.

Q. Do you know how John Sullivan happened to be at the house, how did he come to go there?

A. Who sent him?

506 Q. Yes.

A. Yes, sir, it was Mr. Cheasty.

Q. How did the three of you happen to be in the parlor—for whom did he ask?

A. He asked for the family, he asked to come in to make arrangements for board and room.

Q. What arrangements were made?

A. It was made that he might come on the 1st of August, and he offered to pay, himself, five dollars a day, he made the price himself.

Q. Was that for board and lodging and tuition?

A. Yes, sir.

Q. And that amount he did pay?

A. Yes, sir, that amount he did pay.

Q. Up to the time of his death?

A. No, just the Saturday before.

Q. He paid up until the Saturday before his death?

A. Yes, sir.

Q. And he owed you for the week immediately preceding his death, did he not?

A. Yes, sir, not quite a week.

Q. That amount had never been paid you, has it?

A. No, I do not think so.

Q. Now, the time when you became actually engaged to Mr. Sullivan was what day?

A. It was the 8th of September.

Q. That was the first time that you became engaged to him?

A. Yes, sir.

Q. And what time of day did the engagement take place?

507 A. I think between four and five, I am not sure it was between four and five.

Q. What day of the week was it?

A. It was Saturday.

Q. And in what room were you?

A. We were in the parlor, the front parlor.

Q. Was anybody else present?

A. No.

Q. Do you know whether there was anyone in your immediate vicinity at that time?

A. No, I did not know at the time.

Q. Now, please repeat exactly what Mr. Sullivan said on that occasion, his exact words?

A. When we were engaged?

Q. Yes.

A. He said—he asked me, as far as I can remember, he asked—he told me the time had come for my decision.

Q. Put it as though he was speaking.

A. He told me, "Now the time has come for you to give me your decision; and you must have made up your mind by this time." Well, I told him, "Of course, I have consulted my brother and my sister, but especially my brother, because he knows you well and he told me, my brother told me that he knew your reputation and that you were esteemed and thought very much of in Seattle, and how he advised strongly for me to marry you, and he gave his consent and for me to give mine." Then he told me, he thanked me and said that I made him very happy, and he hoped that he would make me a very happy woman, and that he loved me dearly

508 and thought a great deal of me, and I told him too that I liked him very much and that I had great esteem for him, and then he told me, that is, he promised me, "I will give you everything." "Everything," he says, "would be mine."

Q. Did he say anything else?

A. Then he says, "We will travel a great deal; that we are going to France to see the exposition; that I had been there before, and that I had no- seen half of what I wanted to see there, and I had been there a month;" that he had not even seen the ground-floor

and he had not seen anything of the upstairs, and he wanted to go back and see everything and take me with him.

Q. Now, when he was making this proposal of marriage to you, did he say anything more than you have said?

A. Well, I do not know. He told me many times——

Q. I mean on that occasion?

A. On that occasion?

Q. Yes.

A. Well, he told me, of course, all about his business. He told me that he had property, that he had two lots back on Eighth street, and he asked me what I thought of it for a residence, to have a residence built there, and I told him I did not like the location very much, but we could have houses built to rent, and we could buy some other property on Broadway, or something that we wanted, to be near our church, you know, and that I did not like the location at all, but "you can make money out of these two lots."

509 Q. But in regard to your becoming his wife, did he say anything more than you have stated here?

A. Well, of course, he said many things that I cannot remember.

Q. Well, that is a very important event in your life?

A. Yes, and then he told me so many things.

Q. I am asking about that time.

A. About that time? That day—I cannot remember—I do not believe there is a woman lives that could say these things—it is better to keep them to one's self.

Q. You are here to tell all that you know.

A. All that I remember.

Q. Now, did he say anything more on that occasion in regard to your becoming his wife than you have just stated?

A. Nothing that I can think of.

Q. Now, was the door of the parlor open?

A. Well, I did not notice, it is very likely, because he wanted most everything open, he wanted air—I could not remember.

Q. Where were you sitting in the room?

A. On the lounge, we have two lounges there, and I was sitting on the lounge near the door.

Q. Where was the lounge situated with reference to the door opening on the hall?

A. Situated on the left side.

Q. Could you see from the lounge into the hall?

A. I believe so.

Q. Could you?

A. If I had looked, yes, certainly.

510 Q. Now, where is the telephone located?

A. It is at the entrance, just at the door, and as you enter it is on the right side.

Q. How far from the door into the parlor?

A. The hall is very small, there is no difference—but very little.

Q. About how far?

A. Just a step.

Q. About two feet?

A. I am not a very good mathematician, and I do not know about feet.

Q. Suppose your umbrella is about three feet and a half—was the telephone further from the door than the length of your umbrella?

A. Oh, no, not half, about half.

Q. How far from the door was the lounge on which you were sitting?

A. It might be five feet.

Q. A little more than the length of your umbrella?

A. Oh, I think so. You have to make two turns.

Q. Would it be about the length of your umbrella, twice the length of your umbrella?

A. I could not tell.

Q. I mean approximately.

A. I am afraid I could not tell.

Q. Show with your hands about how far?

A. It must be longer than this umbrella?

Q. Would it be twice as long as your umbrella?

A. No, I do not think so.

Q. Now, were you and Mr. Sullivan speaking in whispers?

A. No, not at all.

511 Q. You spoke in the ordinary tones?

A. Yes, sir, louder than the ordinary tone.

Q. And when he asked you to give him your answer as to becoming his wife he spoke that in a louder than an ordinary tone?

A. Yes, sir.

Q. And you gave him your answer louder than an ordinary tone?

A. Oh, yes.

Q. You wanted to make it perfectly clear so that there would be no misunderstanding?

A. I did not want to do anything—I just spoke the way I would speak.

Q. But both of you were talking in an unusually loud tone?

A. No, not in an unusually—just as I talk to you.

Q. Now, did you see Mrs. Eames during that time?

A. No, indeed. The first thing I heard about that was when she testified.

Q. But you did not see her there at the time that Mr. Sullivan proposed to you?

A. Not at all.

Q. Did you hear her go to the telephone and ask Central give her a number?

A. No.

Q. Has Mrs. Eames got a key to the front door?

A. Yes.

Q. Did you keep your front door locked?

A. Oh, yes, always.
Q. Now, what kind of a lock, was it a night latch?
A. I do not know what you call a night latch.
Q. Was it one of these little keys? (Showing.)
512 A. You have to turn it just once, but inside there is another lock to open the door. You have two locks.
Q. Is it one of these small latch keys?
A. No, just an ordinary key.
Q. Does it have to stand the whole way in the lock?
A. Yes, sir.
Q. Now, if you were sitting on the sofa there, and anyone coming in the door turned the key and came in the door you would know of it?
A. No, indeed I would not. Mrs. Eames done it very often without my seeing her.
Q. I say if you were sitting on that sofa near the door and Mrs. Eames should come in and unlock that front door and come in, would you notice it—would you notice her coming in?
A. No, I was—if I was busy with other things I would not.
Q. If you were sitting there talking to anyone on that sofa would you notice it?
A. No.
Q. If Mrs. Eames went to the telephone and took down the ear-piece and asked central to give her a number, and you were sitting on that sofa where you were sitting, would you notice it?
A. No.
Q. You are sure of that?
A. Yes.

Mr. HAYS: I do not think the witness quite understands the question.

Q. Would you notice it—could Mrs. Eames unlock that front door and go to a telephone and take down the ear-piece and speak to central while you were sitting on that sofa, without your noticing it?
513 A. I do not know, but at that time I did not notice it—maybe I could.
Q. Could she have done it without your noticing it?
A. Yes, sir, certainly; I am sure she has done it many times. I have come out of the parlor and found Mrs. Eames there, and I did not know what to say I was so surprised, she surprised me, and I am in the parlor myself many times, and it happens and I says, "Oh, Mrs. Eames, I did not know that you were there;" it has happen-d time and time again.
Q. Now, many times, you have been sitting on that sofa and Mrs. Eames has unlocked that front door and come to the telephone and taken down the ear-piece and called up central, and you have not found it out?
A. Oh, I don't speak about the marriage——

Q. I am speaking about the marriage.
A. Yes, I don't know if I have ever done it——
Q. Could you do it, could you be sitting on that lounge and Mrs. Eames come to that telephone and call to central without your knowing it?
A. Yes, sir, certainly.
Q. Now, were you sitting nearer the door or was Mr. Sullivan sitting nearer the door?
A. He was sitting nearer the door.
Q. How long is the lounge?
A. Oh, it is quite a long lounge, what you call—you call can sleep on it.
Q. Were you sitting close together?
A. Yes, sir, quite close.
514 Q. And which end of the lounge were you sitting at?
A. Just near the door.
Q. Now, how long did the conversation between Mr. Sullivan and yourself take?
A. Oh, I don't know.
Q. I mean about?
A. It took—we talked about that subject until about dinner time.
Q. What time is dinner time?
A. Six o'clock.
Q. And the conversation took place between four and five?
A. Between four and five and six, it went on all the time.
Q. Did you hear Mrs. Eames shut the door when she went out?
A. No.
Q. Did Mrs. Eames go out of the front door or the back door?
A. I could not tell.
Q. You do not know?
A. I do not know.
Q. You did not see her at all that day?
A. No.
Q. You are sure that she did not pass through the parlor?
A. Oh, I am sure. I think I would have noticed her.
Q. Are you sure she did not?
A. I would have noticed her if she had, certainly.
Q. Now, go back to the time when Mr. Sullivan went first to your house, what was his condition of health?
A. Fine, he told me himself that he had always been strong and had never been sick in his life ever since he remembered. Never laid down with sickness. He told me once he hurt his foot and had laid in the hospital for two weeks, but not for sickness.
515 Q. Now how did he come to tell you about his health?
A. Oh, I don't know. He was talking about himself, you know, telling me all about his affairs.
Q. Now, how long did that condition of health continue?
A. It continued until about the 15th of September.
Q. September?

A. Yes, sir.

Q. Up to the 15th of September he was in perfect health, was he?

A. Yes, sir, perfect health.

Q. When was the last time, prior to his death, that Mr. Sullivan left your house and went out?

A. The last time?

Q. Yes.

A. It was on the 18th of September.

Q. You are positive that after the 18th of September he was not out of your house?

A. Yes, sir, I am positive.

Q. You are just as positive about that as of anything else, are you not?

A. Yes, sir, indeed, as to anything else that I state.

Q. Who else resided at your house?

A. We had a lady, a Miss Adrian.

Q. When did she live there?

A. She lived there when Mr. Sullivan was there, but not all the time.

Q. Give me the date.

A. She lived there, she had been with us sixteen months and was there from the 1st of August—Mr. Sullivan was there I think, until the last of September—no, the middle of September, I cannot
516 remember, my sister remembers.

Q. She left before his death?

A. Oh, yes, a month before his death, almost.

Q. Then who else lived in the house? Give the names of all the persons.

A. No one else.

Q. Except Mr. Sullivan and your family?

A. Yes, sir.

Q. And that family was Mr. Daussat, Mrs. Daussat, Miss Hermance Carrau and yourself?

A. Yes, sir.

Q. You did not have any house girl?

A. No.

Q. No one else was in the house?

A. No, sir.

Q. Now, did Mr. Sullivan go to reside at your house on the 21st of August?

A. On the 1st of August.

Q. It was on the 31st of July?

A. It was on the 1st of August.

Q. What was the first night that he slept in your house?

A. He took his room on the fifth because that lady was there, she was there to the sixth but she left a little before, she was kind enough to move to give him his room. He asked for the front room and he wanted the front room and we asked her if she would have

the kindness, because it would be no annoyance to move before, she was kind enough to do it.

517 Q. He took the room that she had vacated, did he?

A. Yes, sir, the front room.

Q. Now had she been intending to leave before that?

A. No, we asked her to move but she asked to stay a little longer because it would be uncomfortable to move.

Q. She had been living there for 16 months?

A. Yes, sir, about that.

Q. Why did you want her to move out and Mr. Sullivan to move in?

A. Because he wanted the front room—well, she was going to move, she was at the hospital and she was going to the hospital.

Q. And you say that she intended to move?

A. Yes, sir, she intended to move about the sixth and we asked her to move a little sooner and she moved.

Q. Now, prior to Mr. Sullivan's becoming sick, you simply talked in French, did you?

A. Not very much after we were engaged, I did not teach him much French since we were engaged.

Q. No, but prior to his becoming sick?

A. Yes.

Q. You did not have anything to do for him excepting to teach him French?

A. Yes, sir, to teach him French.

Q. Who took care of his room?

A. I did and my sister did.

Q. Your sister and yourself?

A. Both of us.

518 Q. Now have you in your possession any writing that Mr. Sullivan ever wrote to you?

A. No indeed. There was no occasion for it.

Q. Have you an engagement ring that he ever gave you?

A. No, I have not, he said he would buy everything in France—Paris.

Q. But you were to be married by the time that you got to Paris, were you not?

A. Oh, certainly.

Q. He never gave you a ring, did he?

A. No.

Q. Have you any article of jewelry that he ever gave you?

A. No.

Q. Have you anything whatsoever that he ever gave you?

A. No, not especially to me. He gave the family the stairs carpet.

Q. But the stairs carpet is the only present that he ever made?

A. Yes, sir.

Q. Did that stairway lead up to his room?

A. Yes, sir.

Q. That was the front stairs?

A. The front stairs, yes sir.
Q. And that stairway led up to his room?
A. Yes, sir.
Q. You had to go up that stairway to go to his room?
A. Yes, sir.
Q. And he had the best room in the house, did he not?
A. Yes, sir.
519 Q. Did he furnish the room?
A. Yes, sir, he furnished the room.
Q. And it was nicely and comfortably furnished, was it not?
A. Yes, sir, very. It was furniture that he had in his building.
Q. Now what was the first day that Mr. Sullivan ever definitely spoke to you about marriage?
A. The first of September.
Q. What day of the week was it?
A. On Saturday.
Q. And it became an actual engagement on the succeeding Saturday?
A. Yes, sir.
Q. That was the first time that it became an engagement?
A. Yes, sir.
Q. Now, the first Saturday that he spoke to you, just exactly what did he say—say it as though you were Mr. Sullivan?
A. We met and he sat down and he told me that, "You make everything so quiet and so nice for me here, I feel so happy here. I have always lived in others' homes or in my office, and I have never had the comfort of a home—home comfort, and you give it to me and I hate to part, I could not part with you," and I says "Mr. Sullivan, you do not need to part, we want you to stay with us, that is what we want." "Oh," he said, "I could not do it unless you consent to be my wife." I says, "Mr. Sullivan you take me by surprise, I have a great regard for you, the greatest esteem for you; I have heard a great deal about you and I know that you are
520 well and favorably known in Seattle, but still there is a great difference of age between us." He says, "I have plenty of money. I have money to throw away, and I have very good health and I have a very good temper and you be very happy and I will make you very happy." He told me what his property brought him, his buildings and the property that he had. He had told me that before, many times before.
Q. He told you at that time about the property?
A. He told me at that time too, and said he had no one on earth, hardly any friends, what he could call, and he had no relatives of any kind, and he would leave everything to me, everything that he possessed, would be mine and he expressed himself very strongly.
Q. Now, did you make an appointment for a definite hour the next Saturday to give him an answer?
A. Yes, sir.
Q. At what hour did he appoint?

A. Well, I did not appoint any hour, he asked me many times in the week if I would not shorten the time and then I smiled and did not say anything. In the morning then I knew he wanted me to give him my answer, and I wanted to tease him, and I would not give him the answer, although I had made up my mind.

Q. Now, the next Saturday did you meet in the parlor by chance or by agreement or appointment?

A. No, we met every time and he always came home at the
521 time that I gave him the lesson, whether I gave him the lessons or not. He always came home about four o'clock, between four and five, and then I was always in the parlor doing some embroidery work and I was waiting for him. He took my time; I spent all my time with him.

Q. How long a time did the lessons occupy?

A. At the time, he did not take lessons. He occupied sometimes fifteen minutes, but we always stopped and talked English.

Q. Did the lessons—what was the fixed time for the lessons?

A. Four o'clock, but it was not a fixed time because he came any time that he wanted to.

Q. He came in from down town?

A. Yes, sir, his office.

Q. Now, was anyone present at any time when Mr. Sullivan talked with you in regard to your marrying him?

A. No, at the time—no, not at the time, but my sister—he told me that he would give everything to me and I would have everything that he possessed.

Q. And that was what day?

A. That was on the first Saturday, September, the first Saturday in September.

Q. Where did that conversation take place?

A. In the parlor.

Q. At what time of day?

A. At about four, between four and five.

Q. Where was your sister, Miss Hermance?
522 A. She was in the dining-room.

Q. And how far is the dining-room from the parlor?

A. It is only a folding door between the two, but that day we had portieres there.

Q. And did you know that she was in the dining-room?

A. Yes, sir, I heard her.

Q. Did Mr. Sullivan know that she was there?

A. Yes, sir.

Q. And that was the first time that he spoke to you on the subject of marriage?

A. Yes, sir.

Q. And at that time you were whispering?

A. No, just speaking.

Q. Speaking in the ordinary tone?

A. Yes, sir, speaking in the ordinary tone.

Q. So that anyone in the next room could hear you in there?
A. No——
Q. She was in the next room?
A. She was in the next room, but we did not call her not to hear—I did not know if he noticed she was there or not.
Q. But you knew that she was there?
A. I heard her stir.
Q. And did she tell you afterwards that she heard the conversation?
A. She went and told my sister, my other sister, Mrs. Daussat as soon as she heard it she ran to the kitchen and told Mrs. Daussat.
Q. What did they do?
A. I do not know, she did not tell me.
523 Q. Did they come in and congratulate you?
A. No, indeed, I was not engaged at the time.
Q. And you had not made up your mind at the time?
A. No, I had not made up my mind.
Q. And you did not know at that time what answer you were going to give to Mr. Sullivan, did you?
A. No, but I was very much impressed of him because he was so nice, and he was a very nice man, and I always liked him from the first, he was so lovely.
Q. And did you and your family talk over his affairs?
A. No, not very much.
Q. Did he talk in your family?
A. No, he spoke to me, that is all.
Q. But he was a very quiet and reserved kind of a man, was he not?
A. Well, that is so, but he was not with us.
Q. Was not with any of you?
A. No, he was very cheerful.
Q. Well, but as to his business affairs, did he talk these over freely?
A. Oh, no. They only met at the table, but he spoke to me about his business and spoke to them some.
Q. Does your sister give French lessons?
A. No.
Q. You are the only one who does?
A. Yes, sir.
Q. Now, you are positive that your sister overheard the conversation in which he first broached the subject of marriage to you?
A. Yes, sir, she told me what he said. I do not think that
524 she heard anything else. I did not ask her very much, we did not speak very much about it.
Q. Now, Miss Carrau, you are a Roman Catholic, are you not?
A. Yes, sir.
Q. Have you been one all of your life?
A. Oh, yes, brought up in it.
Q. Was Mr. Sullivan a Roman Catholic?

A. Yes, sir, but not a very ardent one. I am afraid he did not attend to his duties very strictly.

Q. Now, what church did you go to?

A. The Broadway church.

Q. What is the name of it?

A. The Immaculate Conception church.

Q. Do you know what church Mr. Sullivan attended, when he did go to church?

A. To Father Prefontaine.

Q. Did he ever go to the Church of the Immaculate Conception with you?

A. No, he nev-r went to church with me.

Q. After you became engaged he never went to church?

A. No, I thought it would be time to take him afterwards.

Q. After you were married?

A. Yes, sir.

Q. While you were engaged he never went to church with you?

A. No, he never asked me.

Q. Father Sweere is the priest at the Immaculate Conception church?

A. He is one them.

Q. Is he your priest?

A. Yes, sir.

525 Q. Now what day was it you said Mr. Sullivan was taken sick?

A. Taken sick at home; it was on the 18th of September.

Q. How did he show his sickness?

A. He had very shortness of breath, hard to breathe.

Q. Did he take to his bed?

A. On that day.

Q. How long did he remain in bed?

A. Well, he was sick, he ought to have stayed in bed.

Q. How long did he remain in bed?

A. Well, I used to go up and get him to go to bed again. He would stay up all the afternoon in bed.

Q. Did he go to bed on the 18th of September?

A. Yes, sir.

Q. Did he ever have on his day clothes after the 18th of September?

A. No, never.

Q. Never had on his day clothes. So that he was in his night robe?

A. Bath robe, my brother-in-law's bath robe, we gave him.

Q. But as to putting on the clothes that he went out on the street, he never had these on after the 18th of September?

A. No.

(Signed) MARIE CARRAU.

At this time a recess was taken until 1 o'clock p. m.

526 Afternoon session, 1 o'clock p. m.

Continuation of proceedings pursuant to adjournment.

Miss MARIE CARRAU, on the stand for further cross-examination.

(Mr. HOWE:)

Q. Miss Carrau, when you became engaged to Mr. Sullivan, was any date fixed for your marriage?

A. Yes, sir, just before starting for Paris.

Q. What was the date?

A. The first of October.

Q. Now, when was that date fixed?

A. It was fixed—well, he had it in his mind that he would go on the first of October.

Q. When was it that you and he agreed that it should be the first of October when you were married?

A. It was the day when we were engaged.

Q. That is when you gave him your consent, your answer?

A. Yes, sir.

Q. And that was what day of September?

A. It was the 8th of September.

Q. At that time you and he agreed that on the first of October you would be married?

A. Yes, sir.

Q. Now, did you prepare any trousseau?

A. Well, very little, because he says, "We will get everything in Paris." He says, "We will just take a small trunk," and he told me how to fix my trunk, how to strap it, have a strap on the bottom of it so that it would not be shaken up, and that when we got in Paris there were better things in Paris anyway.

527 Q. You mentioned the income that he told you that he was getting from his building?

A. Yes, sir.

Q. How much?

A. Eighteen hundred dollars per month.

Q. Did he mention any other property?

A. Yes, sir, he mentioned property, a homestead, a farm; he called it a farm that he had on Lake Washington. And then a party had given him compensation for the property, he had in Magnolia Bluff, and it was taken for the barracks.

Q. Did he give you the value of that?

A. He told me it was a hundred and sixty acres and a man offered to buy it long before, a man named Clark.

Q. Did he tell you——

A. Yes sir, he said he could sell it for a hundred and fifty dollars an acre, but he did not want to because it would be better property otherwise.

Q. Did he tell you the value of the Ballard property?
A. That is the Ballard property.
Q. Now, coming down to the time when he was taken sick, that was the 18th of September?
A. Yes, sir.
Q. And who nursed him?
A. I did.
Q. How often were you in his room during the day?
A. Almost all the time, sometimes I would sit down and read to him.
Q. Was he very sick?
A. No, I did not think he was. He had never said he was very sick, he never told us.
Q. Did he appear to you to be very sick?
528 A. Well, at first, yes.
Q. And then did he improve?
A. He did improve, yes.
Q. Now, did he get up out of his bed?
A. Yes, sir.
Q. And sit up in a lounge chair?
A. Yes, sit up in a lounge chair.
Q. Then he would have his bath robe on, would he?
A. Yes, sir.
Q. Now, when did he become very sick, when was the first time that he became very sick?
A. Well, it was on the 18th, that was his worst day, 18th of September.
Q. Then he got better?
A. Yes sir.
Q. When did he get very sick again?
A. Well, I did not notice anything particularly that he got any worse, but that night he made his will.
Q. Now, what date was it or what night was it that he told you to call your sisters and brother in?
A. The night before he died.
Q. What date is that?
A. 25th.
Q. What time of night?
A. About eleven o'clock.
Q. Now, what made him, at eleven o'clock at night, tell you to call your sisters and brother in?
A. I could not tell, he felt bad, I suppose.
Q. He was breathing hard at that time?
A. Oh, very bad, yes.
Q. Did he appear to be very sick at that time?
529 A. Very weak.
Q. And did you know what he was going to do?
A. No, I did not.

Q. Did you know what you were calling your brother and sisters in for?

A. No, I did not, I had not the slightest idea.

Q. Now, where were they when you went to call them?

A. Down stairs in the sitting-room.

Q. And did they come up?

A. Oh, yes, they ran upstairs.

Q. What was the first thing that Mr. Sullivan said when they came into the room?

Mr. HAYS: I desire to object to the further crôss-examination upon this question. The witness has answered it now several times and it seems cumbering the record unnecessarily to have a continued repetition.

A. Well, I don't object; let him go; I can answer.

Q. The question was what was the first thing that Mr. Sullivan said when he came in the room?

A. I told you before, but I will repeat it if you want it. He said just these words, "I want you to remember and witness that I will all my property and personal effects worth many thousand dollars to be the money and property of your sister, Marie. I am sick and I do not know what might happen," and at that time he pointed to me.

Q. And that was the first thing that he said when they went into the room?

A. Yes, sir.

Q. What else did he say?

530 A. He did not say anything else.

Q. What, then, did your brother and sisters do?

A. I think my brother or some one, I think, said, "Thank you."

Q. What did anybody else say?

A. Nothing that I remember.

Q. Was he sitting up at that time?

A. Yes, sir, in his armchair.

Q. And did you leave the room?

A. I did not leave the room at once. My sisters and brother did.

Q. What did you do?

A. I could hardly speak, I could not say anything.

Q. You were overcome with emotion?

A. Yes, sir, indeed I was.

Q. How long before you recovered your self-possession?

A. Well, I don't know. I tried very hard to summon all my courage to speak to him, but I could not. Then I told him that I was going down to get some milk for him; I wanted to hide my emotion.

Q. It was your agitation that caused you to leave the room?

A. Yes, sir, indeed it was.

Q. Did you go downstairs?

A. Yes, sir.

Q. What did you do down stairs?

A. I warmed the milk and sat down to the writing-desk and I wrote out the words.

Q. How long was it before you went back to his room?

531 A. Well, I could not tell, but it was not long. I do not think it was five minutes after that.

Q. You were out of the room five minutes?

A. Yes, sir, five or ten minutes.

Q. Then you went back to the room?

A. Then I went back to the room.

Q. Why did you write what he said, what made you write it down?

A. I can hardly explain, I suppose in case he will get well, if he should ask me I wanted to please him that I remember the words exactly as he said them. I did not know, I think it was that that made me—I could hardly tell why.

Q. Now, where did you write these words? Where were you?

A. I was in the sitting-room.

Q. Is there a desk in the sitting-room?

A. Yes, a writing-desk. I opened and took a piece of paper from a book my pupils had left and a pencil and I wrote these words down.

Q. You say you took a piece of paper out of a book?

A. Yes, sir, what you call it, not a scrap-book, but a book of school boys?

Q. A tablet?

A. No, I do not know what you call it, I do not remember the name of it, a big large book.

Q. About a foot in size?

A. I don't know.

Q. Show with your hands?

A. About that large. (Showing.)

Q. Was it a writing-book?

A. Yes, sir.

532 Q. A school boy's writing book?

A. Yes, sir.

Q. Did the paper have lines on it?

A. Yes, sir, then there was something written on the book to show what kind of a book it was.

Q. What was the color of the paper?

A. White.

Q. Did the pencil you wrote with have a rubber on it?

A. I do not know; I could not remember.

Q. Well was it a red pencil or a black pencil?

A. A black pencil.

Q. Now, did you carry the writing-book to Mr. Sullivan's room?

A. I did not.

Q. Now, I did not tell him anything.

Q. Now, Miss Carrau, Doctor Eames lived next door to you, did he not?

A. Yes, sir.

Q. If Mr. Sullivan was so ill at that time when he said "I am very sick and we know not what might happen," why did not you send for the doctor?

A. Well, first, poor Mr. Sullivan would not hear of any doctor but his own.

Q. But you thought at that time that he was very ill?

A. No, I did not.

Q. Did not you say that his breathing was very bad?

A. Yes, sir, it had always been since he got sick.

Q. But at the time that he said these words you did not think that there was any danger of his death?

A. No, no idea at that time.

Q. He did not think there was any danger?

A. I do not know what was passing in his mind.

533 Q. Did he say anything to indicate that he thought he might die at once?

weak

A. He said that he felt very sick.

Q. Felt very sick?

A. Yes, sir.

Q. Then when he said that he felt very sick, and you knew that there was a doctor next door, why did not you send for that doctor?

A. I could not have sent because he did not want any doctor but his own. And, furthermore, doctors are not very often at the house.

Q. Now, there was a telephone in the house, was there?

A. Yes, sir.

Q. You did not telephone for his doctor?

had no telephone at his residence——

A. The doctor was not at the office and Mrs. Eames——

Q. How do you know that?

A. Because I know,

Q. How do you know?

A. Because the doctor never wanted a telephone in his house.

Q. You did not telephone for Doctor Carmen?

A. No, I knew, I had looked for Mr. Sullivan one day, and wanted to call him at his residence, but I did not find any telephone, and I asked Mr. Sullivan where he lived, and he says, "He don't live very far from this house, he lives on Madison, but I could not tell you where," and I could not find the telephone number in his office.

Q. Where was Doctor Carmen's office?

534 A. In the Sullivan block.

Q. Did you telephone to his office?

A. Several times.

Q. That night?

A. No, I did not know that he was so sick.

Q. You did not telephone for Doctor Carmen?

A. No, indeed I did not.

Q. You did not send for a priest?

A. No, I would not have sent except he asked for one. I would not do that for anyone.

Q. Now, Mr. Sullivan after saying these words that you say he said, had plenty of time before he died to have signed that writing, did he not?

Mr. HAYS: I object as incompetent, irrelevant and immaterial, and asking for an opinion.

A. I do not think that he was able to, because he never spoke to me since.

Q. Never spoke to you afterwards?

A. No, he was drowsy or sleepy.

Q. He was drowsy and sleepy?

A. Yes, sir.

Q. As soon as he said these words?

A. Well, I told him that I would go and——

Q. Did he go to sleep as soon as he said these words?

A. When I came back he had retired: he was asleep.

Q. Was he breathing hard?

A. Yes, he was breathing hard.

Q. Did you see him awake the next morning?

A. Yes, sir, a little while.

Q. How long?

535 A. Only—I tried to rouse him to have his breakfast, but I could not rouse him, but about eight o'clock, before eight o'clock—I could not tell the time it was, he seemed to rouse for a little, but he did not speak. He just said these words, he spoke very feebly, when I told him that I was going to warm some milk for him, he says, "I will do just as you say"; that is the way he said it.

Q. After you found him asleep, on the night you say he spoke these words, he was not in a condition to use his mind?

A. To use his mind?

Q. I mean was he sensible afterwards?

A. Oh, I think so, I don't know, I could not tell.

Q. Now, Miss Carrau, did not he the next morning, was not he the next morning reading the paper?

A. No, I gave him the newspaper, but he did not read it.

Q. He did not read it?

A. No, just as I did every morning; I gave him the newspaper, and he had the newspaper near the bed, but he did not read it.

Q. How do you know he did not?

A. Because I found it when I came back, the paper was in the same place.

Q. Was he too sick to read it?

A. I suppose so; he was drowsy.

Q. Now, had he been in that same drowsy condition before speaking these words?

A. No, not before.

Q. That drowsiness——

536 A. (Interrupting.) Oh, you know the little he said exhausted him, he was quite exhausted after he talked that night.

Q. Now, how long did it take Mr. Sullivan the night that he spoke these words to say all that he said, how many minutes?

A. I could not tell.

Q. I mean about?

A. Oh, I think he spoke very slowly.

Q. About how long?

A. Oh, five minutes.

Q. That exhausted him, did it?

A. Well, he was exhausted before.

Q. He was exhausted before that?

A. Yes, sir.

Q. Now, did not his exhausted condition make you believe that you should send for a doctor?

A. No, because the doctor said he was very weak, and there was no danger.

Q. Then you do not think that there was any fear of death?

A. No, I did not know at the time, but the doctor, two or three days before, it was on Friday, he told me that he would get as well and as strong a man as he was before.

Q. Had the doctor told him that?

A. Yes, sir. He told Mr. Littell himself when he came that he would be down in a few days.

Q. Then, at the time that he spoke these words, you think that he expected to get out and to get well again, do you?

A. I do not know what was on his mind.

Q. You expected him to get well?

537 A. I hoped that he would.

Q. You expected him, did you not?

A. Yes, sir, I expected, the doctor told me. I never knew a doctor to make a mistake—they did here, though.

Q. You did not think there was any danger of death?

A. No, I did not think for a moment that he was in danger of death, surely not. I come from a family of physicians, and I relied on their word.

Q. Now, Miss Carrau, at the time that he said these words, he was sitting in his chair, in his bathrobe?

A. Yes, sir.

Q. And then you went downstairs because of your agitation to get something for him to eat?

A. Yes, sir.

Q. And when you came back where was he?

A. He was in bed.

Q. So, after speaking these words, he must have got up from his chair and gone to bed?
A. Yes, sir.
Q. You were not there when he went into bed?
A. No, I never was there when he went to bed.
Q. Did you give him anything to eat?
A. Something, but he did not eat it. He was asleep and I did not wake him up because the doctor told me to let him sleep.
Q. What time did you go to bed that night?
A. I went to bed about two o'clock.
Q. Now, what were you doing until two o'clock?
A. I went to my room, but I did not go to bed.
Q. Where is your room situated?
538 A. The next, we can even open a door and communicate.
Q. Now, what time did you get up the next morning?
A. At seven o'clock.
Q. Who went into his room first the next morning?
A. My brother went in first.
Q. Who went next?
A. No one but myself. First, after my brother went there—I cannot remember very well if my brother went first or not, but I believe it was I, still I could not tell.
Q. Now, Mr. Sullivan wore glasses, did he not?
A. Yes, sir.
Q. The next morning did he have on his glasses?
A. Yes, sir, I put them on myself.
Q. And handed him the newspaper?
A. I handed him the newspaper, put the newspaper on his bed.
Q. And did you remain in his room?
A. Yes, sir.
Q. For how long?
A. I do not think that it was three minutes.
Q. What time of day was that?
A. About eight o'clock.
Q. And when did you find that he was dead?
A. It was half-past eight, between eight and nine, anyway.
Q. That he was dead?
A. Yes, sir.
Q. When you found that he was dead, what did you do?
539 A. I was not quite sure that he was dead, but I missed something from his room, and later on I understood that it was his breathing. I did not hear any breathing, and his head was that way on the bed (showing), and his eyes were glassy, and I went up to the bed, and the first thing that I says, "My God! he is dead!" But I did not run away from the room, because I never saw a dead man like that before, and I was not accustomed to nursing at all, but I just went up to him, and I thought if there was a spark of life left in him that I could still save him, I could not believe that in that short time he had died. So I went up and took his hands and

chaffed his hands and I felt his pulse, but I could not feel anything, and then I went to bathe his temples, and then I lifted up his head this way, and he was on the edge of the bed—I lifted up his head, and when I lifted it it fell back again, and then it seemed to me it may be the effect of my imagination, but I thought he looked with a sad look in his eyes.

Q. Now, Mrs. Eames came over?

A. Mrs. Eames called soon after. Then I came downstairs and called — sisters to come, and I said, "I think he is dead," and they ran upstairs and they came, and my sister says, "There is no doubt that he is dead," but I says, "Don't say so, he may not be," I could not believe that he was dead. I went to his bed again and from there I told my sister to bring some vinegar and I will bathe his temples and put it under his nose.

Q. When did Mrs. Eames get over there?

540 A. I do not remember. I know my sister went downstairs and she called Mrs. Eames, we always called her when there was any trouble, and she called Mrs. Eames, and she came and climbed the back fence and came in the house.

Q. Mrs. Eames is a very close friend?

A. Yes, sir.

Q. A very close friend of your family?

A. Yes, sir.

Q. There is no one in Seattle closer to you?

A. I do not know, she is my neighbor; we have many other friends, of course.

Q. Now, did you ever tell Mrs. Eames that Mr. Sullivan had spoken these words, and that you had put them in writing?

A. Never, no.

Q. Who was the first person that you told them to?

A. That was Father Sweere.

Q. Did you tell Father Sweere that you had written that down?

A. No, I do not think that I told him that.

Q. No, you do not think you told him that?

A. No, sir.

Q. Who was the first person that you told that you had written them down?

A. I think that it was Mr. Hays.

Q. When was that?

A. I could not tell you that date.

Q. Tell us as close as you can?

541 A. Oh, I could not tell you the date. It was a short time after my brother saw Judge Burke.

Q. I want your memory as to the time that you first told Mr. Hays?

A. Oh, it must be after the middle of November.

Q. Give me the date?

A. I cannot.

Q. As close as you can?

A. It is——

Mr. HAYS: I object, the witness has answered the question the best she can.

A. I have no idea about it.
Q. Now, was it the fifteenth of October?
A. No, it was later than that.
Q. Was it as late as the first of November?
A. It was later than that.
Q. Was it as late as the fifteenth of November?
A. Oh, yes, sir, it was.
Q. Was it as late as the sixteenth of November?
A. I do not think it was the month of November at all.
Q. You think it was after the month of November?
A. I think so; I am almost sure.
Q. Was it in the month of December?
A. It was the last days of November I think or the middle of December.
Q. It was the last of November or the middle of December?
A. The last two weeks in November or the first week in December. I do not think it was any later.
Q. Now, did you go to Mr. McCutcheon's office?
542 A. Yes, sir.
Q. And when did you go to his office?
A. I think it was on Monday the first of October, or the second, Tuesday the second of October, I am not quite sure.
Q. It was either the first or second of October?
A. Of that I am sure.
Q. Did you at that time tell Mr. McCutcheon the words that Mr. Sullivan spoke?
A. No, I did not say the words, he did not ask me.
Q. Did you tell him?
A. No.
Q. Did you tell him that you had put these words in writing?
A. No.
Q. How does it come that you did not tell him?
A. Because he did not ask me, because he wanted us to have him——
Q. Was your brother with you at the time?
A. Yes, sir.
Q. You and your brother were in Mr. McCutcheon's office?
A. Yes, sir.
Q. Were your sisters there?
A. No, sir.
Q. Either of them?
A. No, sir.
Q. Now, if you thought, Miss Carrau, that the words that Mr. Sullivan said were so important that you should put them in writ-

ing, within a half an hour after they were spoken, why was it you did not tell Mr. McCutcheon that you had a will?

A. Because I told him—I wanted to please him, I did not
543 know they were important, I thought they were as important without writing as not, but I wanted to please him if he had asked me, so that I would know them.

Q. Your only object in putting these words in writing was to please him?

A. I think so, I could not explain why I did it, it was one of those instincts that you cannot explain.

Q. That is the only reason that you can give for it?

A. I could not exactly give that reason either.

Q. What reason can you give?

A. I cannot give any reason, it is quite impossible. You do many things, you do not know what you do them for. It may be that I wanted to remember these words.

Q. Now, did you repeat these words to Father Sweere?

A. Yes, sir, I did.

Q. Just exactly as they appeared on the paper?

A. Well, I think so.

Q. Mr. McCutcheon had been the lawyer for your brother had he not?

A. Yes, sir.

Q. In litigation had he not?

A. Yes, sir.

Q. And he was the first lawyer to whom your brother went about Mr. Sullivan's estate, was he not?

A. He did not go to him, Mr. McCutcheon asked him.

Q. Mr. McCutcheon came to your brother?

A. Yes, sir.

Q. You knew at that time that Mr. McCutcheon had been your brother's lawyer did you not?

A. Oh, yes, I knew.

544 Q. You did not think that these words that Mr. Sullivan had spoken were of any special importance, did you?

A. Well, I did not know.

Q. Well, you did not attach much importance to them?

A. Father Sweere told me——

Q. I mean before you told Father Sweere?

A. Yes, sir.

Q. What did you think these words were?

A. I thought it was the expression of a written will he had made, a written will.

Q. You thought he had made a written will?

A. Yes, sir, because he had told me that they did not respect the law and he wanted to know what he meant.

Q. And you thought that Sullivan had made a will just like these words? Was that it?

A. Yes, sir.

Q. Was that the reason that you had them put in writing so that you would remember it?

A. No, that was not the reason at all.

Q. Now, did you understand that the words that Mr. Sullivan had said when your brother and sister came in there that he was trying to explain to you that he had made a written will with those words in it?

A. Yes, sir.

Q. That is what you thought?

A. Yes, sir, later on, I did not think of it at the time.

Q. But you thought previous to that time that he had made a written will and that he was telling you what was in that written will?

545 A. Yes, of course I had reason to believe because he told me that he would give me everything if I would consent to be his wife.

Q. And you thought he had put it in writing?

A. Yes, sir.

Q. And he was telling you what was in the writing?

A. Yes, sir.

Q. That written will, you thought that Mr. Littell had?

A. Yes, sir.

Q. Then you sent your brother to Mr. Littell first to see if that written will was safe?

A. Yes, sir.

Q. Then you sent him, you say, to Mr. Piles and to Mr. Donworth and Mr. Howe to see if it was there?

A. Yes, sir.

Q. And then you sent him to Judge Burke to see what he could find about a written will, was that it?

A. Yes, sir, that is the truth.

Q. And thinking that Mr. Sullivan had already made a written will you did not think it was necessary for him to sign this paper that you wrote down?

A. I would not have asked him for the world to do that.

Q. You would not have asked him to sign it, would you?

A. No, certainly not.

Q. Because you thought that had already been done?

A. No, I would not have done so. It is not the nature of any woman; I would have had to have him to ask me to do that because I would think that it would embarrass him too much.

546 Q. You thought the written will had already been made?

A. Yes, sir, I thought so. I was almost sure.

Q. Then you did not think that these words that he had spoken was the will itself, did you?

A. I thought about nothing at the time but himself.

Q. But although you were so much agitated after you left the room within five minutes you put these words in writing?

A. Yes, sir, certainly, I wanted to go back to him.

Q. Where did you first see Mr. Hays with reference to this matter?
A. I cannot remember when I saw him.
Q. I say where?
A. At his office.
Q. Now, who was present at that time?
A. My brother.
Q. And who else?
A. No one else.
Q. Now, what did you tell Mr. Hays?
A. I told him that they ought to find a will, and I told him about what Mr. Sullivan told, just the same as I have told everybody and then he told me that that was a good will.
Q. And then he took and read you the law out of a book?
A. Yes, sir.
Q. Did you understand the law?
A. Yes, sir, indeed he explained it to me.
Q. Did he explain it to you before he read it to you out of the book?
547 A. Yes, sir, he explained it to me that it was good and then he read it to me.
Q. Had you told him that you had been to Mr. McCutcheon's office?
A. I do not remember; I think I told him.
Q. Did you tell him when you went in that Mr. Kelleher had said that the will was no good?
A. No, I do not think I did.
Q. Did you tell him that you had told Father Sweere about it?
A. I do not remember.
Q. What is your best recollection about it?
A. Yes, sir, I think that I did.
Q. Did you tell him that you had reduced Mr. Sullivan's words to writing?
A. Yes, sir.
Q. Did you have the writing with you?
A. No, I do not think that I had the writing with me, he told me to bring it down.
Q. And did you carry the writing to him?
A. Yes, sir, that same afternoon.
Q. Was the writing that you carried to Mr. Hays the same writing that you made that night?
A. Yes, sir, I brought the copy of the original.
Q. Well, do you mean that you had a copy of the original?
A. I told you before that I had written it on a scrap of paper with a pencil, and the next morning I asked my brother and my sister if they were the same words, if they recollected the words
548 were the same as Mr. Sullivan had said, and my brother said that it was his own words, and then I told them to sign.
Q. And did they sign the original?
A. No, just the copy that I made then with a pen.

Q. Now, where is the original?
A. The original I guess is in court.
Q. That is the one you made with pencil is in court?
A. I could not remember, I think it is.
Q. Did you give that original to Mr. Hays?
A. I gave it to him.
Q. That is the one you wrote with the pencil?
A. I cannot remember, I think it is in court.
Q. The one you wrote in pencil was the one that was sent to court?
A. I think both of them were sent to court.
Q. At any rate you turned both of them over to Mr. Hays, did you?
A. Yes, sir.
Q. And you think that the original is in court?
A. I think so.
Q. Now you say—do you remember being in court when you gave your testimony?
A. Yes, sir.
Q. The original was there at that time, was it not? It was shown to you?
A. I do not know whether it was the original or the copy.
Q. Was not the original in court?
A. I hardly think so; I do not know.
Q. But you are positive that original you turned over to Mr. Hays?
549 A. Yes, sir, I think so, I do not know, maybe it is at home. I will find it if it is at home.
Q. Do you mean to say that you carried a copy to the court and did not carry the original?
A. I do not know, I do not remember, Mr. Howe.
Q. Do you mean that the original document you did not turn over to Mr. Hays?
A. Yes, I turned it over. I do not know whether he gave it back or not.
Q. You did turn it over to Mr. Hays?
A. I cannot remember. I turned it over once.
Q. Now, did your sisters and your brother put their names on the original?
A. No, on the copy.
Q. Now, why was it that you made a copy, if you had already the original in your possession?
A. I do not know.
Q. Had you made the copy before you saw Mr. Hays?
A. Yes, sir.
Q. On what colored paper was the copy?
A. Pink.
Q. When was it that you made that copy?

A. It was the day after the body and the furniture was taken away, it was the same day that he died.

Q. At what time of day?

A. Between eleven and twelve o'clock.

Q. On the day following his death?

A. No, just on the day of his death.

Q. Was it after or before Mrs. Eames had come over to the house?

A. It was after.

550 Q. Well, what made you just now involuntarily say it was before.

A. I took before for after, that is all.

Q. You are absolutely positive, now, have you talked with Mrs. Eames since she has given her testimony?

A. No.

Q. Do you know what she testified to?

A. I have been told what she testified to.

Q. Who told you?

A. I heard that she testified——

Q. Who told you?

A. Someone who was in court at the time.

Q. Who was it?

A. I will not say.

Q. Answer the question.

A. It was Mr. Hays.

Q. How was it, Miss Carrau, that you came to go to Mr. Hays about this matter of the will?

A. Because no one seemed to know—I wanted to see everyone—every attorney that could givr me a little encouragement.

Q. What other attorneys had you gone to?

A. My brother went. I do not believe in going from office to office.

Q. What other attorney did he go to?

A. He went to Mr. Littell and to Mr. Piles and Mr. Howe to your office, I think he was to see you, Mr. Howe, and Mr. Burke, and I knew Mr. Hays, I taught his daughter and taught his

551 wife, and I have met him constantly in his house and my brother knew him, and I told him to go there.

Q. Now, after Mr. Kelleher told Father Sweere and Father Sweere told you that the will was no good, what made you go to some other lawyer?

A. Because I wanted to know, to be sure.

Q. You wanted to be sure?

A. I wanted them to compel these people to produce the will.

Q. Why was it then that you put off going to the lawyer for so long?

A. After what—it was not very long.

Q. You say you went to Mr. Hays?

A. After seeing the other ones. I was almost discouraged but I tried again and I thought the will would be produced.

Q. But you put off going to Mr. Hays over a day or two after Mr.

Sullivan's death, after Father Sweere told you what Mr. Kelleher had said that the will was no good from the early part of November until the early part of December.

A. It took quite a long while. I had almost lost courage but I wanted to try.

Q. Why did not he go to Mr. Hays first?

A. I do not know, because he went to the other lawyers, because they had the papers in their hands; they had Mr. Sullivan's papers in their hands and they knew better than any one.

552 Q. But he was to go and consult them as to whether the will was made was he not?

A. No, he was to go there to see if they could compel these people to give up the will.

Q. He did not go to them to consult them whether your oral will was good?

A. No.

Q. He went to find the written will?

A. Yes, sir.

Q. Now, when you went to Mr. Hays, did you go to find out whether the oral will was good, did you go to find it or to make them give up the written will?

A. Well, I went for the same purpose to make them—to compel them.

Q. To produce the written will?

A. Yes, sir. And then I told Mr. Hays the same words and Mr. Hays said it was a good will.

Q. Now, Miss Carrau, in the petition for letters of administration on Mr. Sullivan's estate, you stated did you not that you were a creditor of Mr. Sullivan's?

A. Nothing of the kind, I was not a creditor of Mr. Sullivan.

Q. Why he paid for teaching, did he not?

A. He paid my sister for teaching.

Q. Your sister did not teach him, did she?

A. No, but he paid, I taught him so little that I was not to be paid for it.

Q. But the board and the lodging and the teaching were what he was paying for?

—. Yes, sir.

553 Q. And he paid it to the sister before his death, did he not?

A. Yes, sir.

Q. And he paid it in a lump sum did he not?

A. Yes, sir.

Q. So that he paid for board and lodging and teaching?

A. Because he could hardly pay for the last time, for I was teaching him so little.

Q. Why did you sign a paper stating that you were a creditor?

A. I did not state that I was a creditor at all. I signed because my sister was not there. I went down there and my brother asked

Mr. McCutcheon if I would do as well as my sisters and Mr. McCutcheon said yes.

Q. You know that Mr. Daussat was up in court when the hearing was being had as to whether Mr. McCutcheon should be appointed administrator, do you not?

A. No, he was not.

Q. He was not?

A. No, sir.

Q. You are sure of that?

A. I am sure of that.

Q. You were not at the time, were you?

A. No, sir.

Q. Now, when did you first make it public that you had heard Mr. Sullivan say these words? And that you had reduced these words to writing?

A. When I told Mr. Hays.

Q. That was the first time that you had made it public?

554 A. I told Father Sweere.

Q. But Father Sweere and Mr. Hays were the only people who knew that up to that time?

A. Yes, sir, up to that time.

Q. How often was Mrs. Eames in and out of your house?

A. I do not know, I could not tell; sometimes five and six times a day and sometimes twelve times and sometimes more.

Q. You never told her about this?

A. No.

Q. You never told her that you were to be married?

A. No, we wanted it to be kept quiet because he said his friends would tease him.

Q. Did you not after his death tell Mrs. Eames that you were engaged?

A. Yes, sir.

Q. What did Mrs. Eames say to you? Just repeat that, the day that she found you in distress.

A. She consoled me, she told me first that, "You must not grieve like that because Mr. Sullivan has lived out his life and I never feel sorry for old people to die," and I says, "Mr. Sullivan, he was sixty years and that is not old; you do not understand what he was to me; we were going to be married. I was engaged to be married and we were going to Paris and it is a great loss for me."

Q. Did you say anything else?

A. I told her that we were going to get married on the first of October. I told her that he was going to give me his property, everything that belonged to him was to be mine.

555 Q. And his death had defeated that, had it?

A. Certainly, his death.

Q. In other words, but for his death you were to get everything.

A. To get everything.

Q. And you thought that his death had deprived you of that?

A. Certainly, but I expected a will would be found. I had no doubt about that at all, but it was not found. I could not swear at the time that death had defeated it, because I did not expect it would be defeated, that there was a will, and I thought it was the same thing, and I told Mrs. Eames if I had his money it would be——

Q. Now, did anybody stay up all night with Mr. Sullivan the night before he died?

A. No.

Q. You did not think he was sick enough for that?

A. No, I did not.

Q. You say you put his glasses on the next morning?

A. Yes, sir.

Q. And was he so feeble that he could not put on his glasses?

A. Yes, it appeared so.

Q. He was so feeble that he could not put his glasses on?

A. Yes, sir.

Q. And even then you did not send for the doctor?

A. Well, I was waiting with impatience for the doctor, he was to be there at nine o'clock.

Q. You did not send for the doctor?

A. I did not, for I knew the doctor was coming and I was waiting for him, and he had no telephone in his residence.

556 Q. Now, he was not in the habit of wearing glasses except when he read?

A. No.

Q. Why did you put his glasses on if he was so weak that he could not read a newspaper?

A. I did not know that he was so weak. I thought he would be able to read it.

Q. Now, what time did Doctor Carmen get there in the morning?

A. Oh, it was about twenty or thirty minutes after he was dead.

Q. At what time?

A. I do not remember; it must have been after eight.

Q. Was it before nine?

A. No, I think it was later, after nine.

Q. A little after nine?

A. Yes, sir.

Q. It was before ten, though?

A. Oh, yes, sir.

Q. Mrs. Eames was there, was she not?

A. I think so, it was before ten.

Q. And Mrs. Eames was there at the time?

A. Yes, sir.

Q. Mr. Littell came with her?

A. He came with Doctor Carmen, he waited downstairs in the hall.

Q. Now, was not Mr. Sullivan sitting in his chair at the time of his death?

A. No, he was in his bed.
Q. He was in his bed?
A. Yes, sir.
Q. Had his breakfast been carried to him?
557 A. Yes, sir, it had been carried to him, but he did not eat any.
Q. And he was sitting with a newspaper in his hand?
A. No, I laid the newspaper on his bed so that he could take it, but he did not take it.
Q. Now, did not Mrs. Eames go up to him and put her hand on his pulse to see whether he was dead?
A. Yes, sir.
Q. And was not the newspaper in his hand?
A. The newspaper was lying by his side.
Q. Was his head on one side?
A. Yes, sir, I had lifted it up before, but it had fallen down.
Q. Where were you when Mrs. Eames came in?
A. I was kneeling there, but I do not remember.
Q. Now, did you go into his room before you went after the beef tea?
A. Yes, sir.
Q. And had he asked for the beef tea?
A. No, he didn't ask for it at all. He roused a little and I told him that I would go and fetch some beef tea for him, and he says, "I will do just as you say."
Q. Was he very weak at that time?
A. Yes, sir, his voice was very weak.
Q. Did you think at that time that he was about to die?
A. Oh, no, it was a great shock to me.
Q. I now show you, Miss Carrau, the paper attached to your petition, filed in the superior court in the matter of the estate of John Sullivan, deceased, on the eighth day of March, 1901, and
558 ask you if the pink paper with the writing on it is the copy concerning which you have testified?
A. Yes, sir, that is the copy.
Q. And it is in your handwriting, is it?
A. Yes, sir.
Q. And the signature of Augustine Daussat—whose handwriting is that?
A. That is my sister's.
Q. Is that her handwriting?
A. Yes, sir.
Q. In whose handwriting is the signature of Louis Daussat?
A. That is his signature.
Q. And Hermance Carrau?
A. Yes, sir, that is her signature.
Q. Now, the original that you have been testifying about, did not have these names there?
A. No.

Q. And have you ever seen the original since it was turned over to Mr. Hays?

A. The original, no.

Q. And you gave it to Mr. Hays on the first occasion of your seeing him?

A. Yes, sir.

Q. What other attorney have you besides Mr. Hays?

A. *I have Mr. Houser and Mr. Robinson.*

Q. You gave your testimony in court when the probating of the will was had?

A. Yes, sir.

Q. Mr. Riddle was there at that time, was he not?

A. Yes, sir.

Q. Mr. Riddle was your attorney, was he not?

A. Yes, sir.

Q. And he is still your attorney, is he not?

A. No, he is the administrator's attorney.

Q. Is he not still your attorney?

A. No, sir.

Q. When did he give up your case?

559 A. I do not know; I think it was when he was appointed attorney for the administrator.

Q. You think since he became the attorney for the administrator that he gave up your case?

A. I know it.

Q. You know that?

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. Then why was it that you filed a petition and got Mr. Riddle, after he became attorney for the administrator, to have the property distributed to you?

A. I don't know; maybe he was my attorney at the time.

Q. You think possibly you might be mistaken?

A. Yes, sir. I am not quite sure when he left my case.

Q. You never discharged him, have you?

A. No, I never discharged him.

Q. And he has never notified you that he has given up your case?

A. No, but practically he has done it.

Q. How do you know it?

A. Mr. Hays told me so.

Q. You never paid any of the fees, never paid any part of the fees in this case, have you?

A. No.

Q. Then if the court fees were paid by some one, for your appearance, he knows that you did not pay them?

A. What do you mean by court fees?

Q. What I mean is this: You have not paid any money in court to any court official, have you?

A. No.

560 Q. You have never paid any money to Mr. Donogan have you?

A. No, sir.

Q. Do you know who Mr. Donogan is?

A. Yes sir, he is my attorney in Ireland.

Q. Do you know who paid him?

A. I asked my attorney to pay the expenses because I cannot do it.

Q. Do you know who has paid him?

A. I think it is Mr. Hays. I am sure it is Mr. Hays. He told me so and I have no doubt that it is so.

Q. You wrote to Mrs. Lyons, did you not?

A. Yes sir, she was a great friend of Mr. Sullivan's. She had done his business, he had no friends there.

Q. Did you ask Father Sweere to write to a priest in Ireland for you?

A. Yes sir, I did, so there would be no false play done.

Q. Did Father Sweere show you the letter that he wrote?

A. No.

Q. Do you know to whom he wrote?

A. No, I do not.

Q. Did you ever hear him say?

A. No, I did not.

Q. Do you know where the priest that he wrote to lived?

A. No, I do not know that.

Q. Did you ever write to Mr. Collins?

A. No, sir.

Q. Did Hays write to Collins for you?

A. Yes, sir.

561 Q. A good many times?

A. Yes, sir.

Q. Before Mr. Riddle went to Ireland?

A. Oh, yes, a long time before. I have the letter at home that shows it.

Q. You have the letter?

A. Yes, sir.

Q. From whom?

A. Someone that gave me his address. Mrs. Lyons gave Mr. Collins' address.

Q. Now, when is the last time that you ever consulted with Mr. Riddle about this case?

A. I never consulted with Mr. Riddle about the case.

Q. Did you employ Mr. Riddle?

A. Yes, I employed him, but I consulted Mr. Hays and then I saw Mr. Hays——

Q. Did you employ Mr. Riddle, or did Mr. Hays employ Mr. Riddle?

A. I told him I wanted him to employ Mr. Riddle because I have heard——

Q. Why did you want Mr. Riddle employed if you already had Mr. Hays?

A. It takes several attorneys for such a case like that.

Q. Did you ever meet Mr. Riddle before employing him?

A. Never.

Q. How did you come to consult him?

A. Because I heard about him?

Q. Who spoke about him?

A. Mr. Coombs, he spoke about him.

562 Q. You employed Mr. Riddle on Mr. Coombs' recommendation, is that is?

A. Yes, sir.

Q. Mr. Coombs has never advised you to dispense with Mr. Riddle's services, has he?

A. Oh, no.

Q. Now, without mentioning any figures at all, both Mr. Riddle and Mr. Hays are employed, so that if you lost the case you did not have to pay anything, is not that so?

Mr. HAYS: I object as incompetent, irrelevant and immaterial and not proper cross-examination.

A. Mr. Hays is employed——

Q. Is Mr. Riddle to be paid whether he wins or loses?

A. He is not to be paid, he is not my attorney any more.

Q. When you employed him, though?

A. Yes—I don't know anything about it.

Q. You do not know anything about it?

A. We have made arrangements as to that.

Q. And the reason that you think Mr. Riddle is no longer your attorney or no longer representing you is that Mr. Hays told you so?

A. Yes, sir, and I say that he is no more my attorney.

Q. That is, you mean he has not been here.

A. No, he has not been here, he has not been anywhere.

Q. But is he not still representing you in the State court?

A. No.

Q. He is not representing you in any way?

A. Not in any way.

563 Q. He has not been for how long?

A. Well, I could not tell you, but it is for a little while. I could not say what time it was.

Q. Do you know why it is that Mr. Riddle ceased to be your attorney when he was appointed for Mr. O'Brien, why it was that he had Mr. O'Brien pay the fee for you to appear in this case?

A. Did he? He has not done so.

Q. He has not done so. Suppose he has done so, do you know why he has?

A. No. But he has not done so. He would have more money if he had done so. I wish he had.

Q. If Mr. Riddle has done so——
A. He has not given one cent.
Q. On your account?
A. No, not on my account.
Q. Now, suppose Mr. Riddle has paid the clerk of the court in this very case and charged that up to the estate, how do you account for that?
A. Oh, he has not done so, that I know of.
Q. Did anyone other than Mr. Cheasty recommend Mr. Sullivan to go to your house?
A. I do not think so.
Q. And you think that when Mr. Sullivan went to your house, he went there for the purpose of learning French by marying a French lady?
A. He said so.
Q. Did you think that was the case?
A. Well, I think so, I have no reason to doubt his word.
Q. Mr. Daussat is your brother-in-law, is he not?
564 A. Yes, sir.
Q. Mrs. Daussat is your sister, is she not?
A. Yes, sir.
Q. And Miss Hermance Carrau is your sister?
A. Yes, sir.
Q. Did you ever have any other occupation other than that of a teacher?
A. Embroidery work.
Q. Now, when you made this copy, did you have the original before you?
A. No, I do not think so.
Q. You made this from memory?
A. Yes sir, I made that from memory.
Q. And had you committed the original to memory—I mean had you memorized the original?
A. I think I had the original before me.
Q. You think you had the original before you?
A. Yes, sir, I had the original before me.
Q. Why was it that you did not get the original signed instead of it, instead of making a copy?
A. At that time I did not think of taking it to my sisters; I did not think of doing it at all.
Q. But why did you not do that?
A. I did not think of it.
Q. Probably if you had thought of it you would have done it?
A. I do not know.
Q. What made you think of making this copy afterwards, what did you want to do with the copy?
A. I don't know, I could not tell you what I wanted to do.
Q. Mr. Sullivan was dead at that time, was he not?
565 A. Yes, sir.

Q. You did not want to show that to him then?
A. No, but I wanted—what I wanted to do?
Q. What was your object?
A. I had no object.
Q. You had no object at all?
A. No.
Q. Now, did the original have on it "eleven thirty p. m."?
A. No.
Q. Did it have on it, "September 25th, 1900"?
A. No, it did not.
Q. Did it have on it, "Seattle, Washington"?
A. No, it may have had "Seattle, Washington," but I do not remember, I do not think so.
Q. Did it have on it, "Mr. John Sullivan"?
A. No.
Q. Did it have on it, "He spoke to Louis Daussat"?
A. No.
Q. Did it have on it, "Augustine Daussat and Hermance Carrau"?
A. No.
Q. Dit it have on it, "about 11 o'clock, p. m. of this day these words"?
A. No.
Q. Did it have on it, "I want you to remember and witness"?
A. Yes, sir. That was on there.
Q. Then, as I understand you, the original had on it these words and no others, "I want you to remember and witness that I will all my property and personal effects worth many thousands of dollars to be the money and property of your sister, Marie Carrau. I am sick and we know not what might happen." That was all that was on it?
A. I think so.
566 Q. Well, what other words, if any, did it have on it?
A. I do not remember whether there was a date on it or not.
Q. You cannot remember that?
A. No.
Q. How do you know it was half-past eleven o'clock p. m.?
A. Because it was when the things had been taken away.
Q. What things?
A. His furniture.
Q. How do you remember that it was half-past eleven o'clock p. m. that he spoke the words?
A. It was at eleven o'clock.
Q. Then the original must have had on it "11.30 p. m.," must it not? Or how do you know that was the time when you wrote that down?
A. This was the time, I put the time, I wrote it on the original.
Q. In other words, when you wrote this you were then putting down what you remember at the time that you wrote this out, was it?

A. Yes, sir, I wrote this out, the original, yes.
Q. Now, was there any pen in that desk?
A. Yes, sir.
Q. Was there ink there?
A. Yes, sir.
Q. Why was it that you did not write out what he said in ink?
A. First?
Q. Yes.
A. Because I found the paper that I used, and I just took what came, I wanted to go back——

567 Q. Why did you want to go back?

A. Because I wanted to see how it was. I never stayed away long out of his room.
Q. Did you think that he was sick enough to need you?
A. No, I never stayed any longer than five or six minutes out.
Q. Why did you think that the matter was of such importance that you should be sure to get it down in writing?
A. I did not, because it was of importance, I did it but I do not know why; I cannot explain.
Q. Were the names Augustine Daussat and Louis Daussat written at the same time, I mean about the same time that the names Hermance Carrau and Marie Carrau were?
A. Yes, sir, at the same time.
Q. And with the same ink?
A. With the same ink.
Q. And with the same pen?
A. With the same pen.
Q. I understood you to say, did I not, that each person whose name is there, himself wrote his name?
A. Yes, sir.
Q. Now, Miss Carrau, you are familiar with the rules regulating the religious life of Roman Catholics, are you not?
A. Yes, sir.
Q. You have been trained up all your life according to the teachings of the Roman Catholic church?
A. Yes, sir.

Q. What is the rule in reference to a marriage which is to
568 take place, in regard to announcing a marriage in church?

A. We can announce it or not, just as we want to. We have only to pay a certain sum, what we call a dispensation.
Q. Then you have got to show some cause for the dispensation?
A. Not at all. If we want it not to be public.
Q. The publication of banns is not necessary?
A. No, sir.
Q. And do you not take communion prior to marriage?
A. Yes, sir.
Q. A marriage in the Roman Catholic church is a sacrament?
A. Yes, sir, a very sacred sacrament; it is quite different from a Protestant marriage.

Q. The priest will not marry a Catholic without their having taken the sacrament, will they?

A. No.

Q. How long prior to the marriage must the sacrament be taken?

A. The same day or any other day, but not very far from it, because they must be in a state of grace, and, of course, they have to be at the same time so that one will not commit many sins, so that sometimes the bride is dressed in white and we take the communion the day before, but when they are not, we take the communion the same day in the morning.

Q. Now, this intended marriage with Mr. Sullivan, which was to take place the first day of October, 1900, had not been announced on the 25th day of October, 1900?

569 A. No.

Q. It was a secret up to that time?

A. Yes, sir.

Q. Father Sweere did not know about it?

A. No, he was going to speak to him the same week that he got sick.

Q. When was Mr. Sullivan buried?

A. On Friday.

Q. On what day of the month?

A. It was the 28th day of September.

Q. In the morning or the afternoon?

A. In the morning.

Q. Do you know Mrs. McElroy?

A. Yes, sir.

Q. Where does she live?

A. She lives on Fifth avenue, I think; she used to.

Q. Do you remember seeing her the day of Mr. Sullivan's funeral?

A. Not the day that he was buried; the day after he died.

Q. Did you see her the day after the funeral?

A. No.

Q. When did you next see her?

A. I do not know; I saw her at the funeral; she was there.

Q. Do you remember telling Mrs. McElroy at that time that Mr. Sullivan died on the day that he was to be married?

A. No.

Q. You did not tell her that?

A. No.

570 Q. Did you at that time tell Mrs. McElroy that you were to be married to Mr. Sullivan?

A. No.

Q. When did you first tell anyone outside of Mrs. Eames and outside of your house that you were to be married to Mr. Sullivan?

A. I told people, I told Mrs. Hartnett.

Q. When?

A. She came to the house.

Q. When?
A. It was the week that she came down to see me.
Q. The week after Mr. Sullivan's death?
A. Yes, sir. I saw her before, I think, at the Lace house, and I told her that I had something to tell her.
Q. Is she an intimate friend of yours?
A. Yes, sir, very intimate, she used to come every week to take French lessons.
Q. But up to the time of Mr. Sullivan's death no one outside of your house knew that you were to marry Mr. Sullivan on the first of October?
A. No, I had not told anyone myself.
Q. I mean so far as you were concerned?
A. No.
Q. Do you remember telling Mrs. McElroy that Mr. Sullivan died on the day that he was going to sail for Europe, or words to that effect?
A. Oh, no.
Q. That he was going to be married on the day that he was going to sail for Europe?
A. No, I did not say anything of that kind.
Q. Nothing of that sort?
571 A. I do not think that I spoke to her of Mr. Sullivan at all. I am sure I did not tell her that because it would not have been the truth.
Q. Now, you remember of being present in court when the will was probated?
A. Yes, sir.
Q. Who else was present?
A. My sisters.
Q. Your brother?
A. Yes, and my brother.
Q. Mr. Hays?
A. Yes, sir.
Q. Mr. Riddle?
A. Yes, sir, and Mr. Houser.
Q. The testimony was all written out, was it not?
A. No.
Q. When was the testimony written out?
A. I don't know.
Q. You do not understand me?
A. No, I do not.
Q. Now, you told Mr. Hays when you became engaged to Mr. Sullivan, did you not?
A. Yes, sir.
Q. And you told Mr. Hays that you became engaged to Mr. Sullivan the same day that you have testified to here?
A. Yes, sir.

Q. And everything that you have testified to here you told Mr. Hays when you first saw him?

A. Yes, sir.

Q. Did you tell Mr. Riddle also?

A. No, sir. I went over and spoke to him a little about the subject, and not stating that we were to be married the first of October.

Q. You have stated in your answer that you were engaged to be married to Mr. Sullivan many months before his death?

A. That is a mistake.

572 Q. That was a mistake?

A. Certainly, that is.

Q. And that was Mr. Hays' mistake, was it?

A. Yes, sir.

Q. And it was a mistake to state in the petition for the appointment of Mr. McCutcheon, as administrator, that you were the creditor?

A. Yes, sir.

Q. And it was a mistake to state in that petition that Mr. Sullivan had died intestate, was it—do you know what intestate means?

A. Yes, sir, it was a mistake if it was done, why it was a mistake.

Q. Now, when was Mr. Sullivan's furniture moved from the house?

A. At about noon, between eleven and noon.

Q. What day?

A. On the same day that he died.

Q. Where was it taken to?

A. To the building.

Q. You made no objections to that being done?

A. No, I was to- much disturbed. But my brother tried to telephone to my sister not to let them have anything, but he could not get them over the telephone. He wanted to keep the things there, because he knew they belonged to me.

Q. And that was the reason?

A. That was the reason.

Q. Now, did either Mr. Sullivan or yourself make any application for a dispensation so that your marriage could be performed?

573 A. No, we were going to.

Q. When did you expect to?

A. He expected to do it the same week that he got sick.

Q. And after he got sick did you still expect to be married on the first of October?

A. No, I knew it would be postponed.

Q. But still you did not tell anyone?

A. No, I did not, because no one knew that we were going to be married.

Q. I understood you to say that these papers that you turned over to Mr. Hays, this pink paper, the copy of the will you turned it over to Mr. Hays when you first talked to him?

A. Yes, sir.

Q. And that you think was about the latter part of November, or the early part of December?

A. Yes, sir; the first two weeks in December, I think it was; I could not be sure.

Q. Well, is that the closest that you can come to it?

A. Yes, sir.

Q. Do you know the date that you consulted Mr. McCutcheon?

A. It was the first or second of October.

Q. And do you know the date that Mr. Daussat spoke to Judge Burke?

A. No, I could not state.

Q. Do you know the date that he spoke to someone in our office?

A. No, I do not.

Q. No priest visited Mr. Sullivan while sick?

A. Father Sweere came one day, but he did not see Mr. Sullivan.

574 Q. Now, did you give any directions in regard to Mr. Sullivan's funeral?

A. No.

Q. Mr. Littell?

A. I told Mr. Littell that I wanted him to be buried in Calvary cemetery; he was a Catholic, and I did not know if Mr. Stewart was a Catholic.

Q. That was the only direction that you gave?

A. Yes, sir; they did not ask me.

Q. Did you tell Mr. Littell at that time that you were going to marry Mr. Sullivan?

A. No.

Q. Did you tell him that you had this nuncupative will in your possession?

A. No.

Q. Did you ever tell Mr. Littell that you had this nuncupative will?

A. No, not I, but my brother.

Q. You say your brother went to Mr. Littell to get him to produce a written will?

A. Yes, sir; but he told him to——

Q. At that time?

A. At the time.

Q. Was that before or after you had told Mr. Hays?

A. That was before.

Q. So that was before?

A. It was long before.

Q. It was before you told Mr. Hays that Mr. Littell knew that you claimed that Mr. Sullivan had spoken these words, was it?

A. My brother told Mr. Littell before Mr. Hays knew anything about it.

Q. Then, Mr. Hays was not the first person outside of Father Sweere who knew about it?

A. No.

575 Q. Then did you ask any of the priests to say mass for Mr. Sullivan?

A. I had no money.

Q. I did not ask you that. I asked you if you asked them?

A. No, I said pray for him; that is all I could do.

Q. Now, did you and Mr. Daussat come home together from the funeral?

A. Yes, sir.

Q. And did your sister come with you?

A. Yes, sir; all three.

Q. Who sat in the seats together on the train?

A. On the train?

Q. Yes.

A. My sister and I—my sister and I wanted to be alone.

Q. Did Father Prefontaine sit near you?

A. Of course he came after we came, and he spoke to my brother.

Q. He spoke to your brother?

A. Yes, sir.

Q. Did you hear the conversation between them?

A. No. I know he spoke to him about him going to the Holy Land.

Q. Did you hear your brother and Father Prefontaine have any conversation on the subject of the will of John Sullivan?

A. No.

Q. Would you have heard of it if they had had such a conversation?

A. Well, I think they spoke a little about it.

Q. You think they did speak about it?

A. I think they did speak about it, and then I think he spoke too that he had gone to see——

576 Q. I mean about the will?

A. Oh, no, not about the will.

Q. The will of John Sullivan was not mentioned?

A. No, not at all.

Q. You are positive.

A. There were so many people——

Q. You are positive of that?

A. Yes.

Q. And the will of John Sullivan was not mentioned?

A. No, sir.

Q. In the conversation with Father Prefontaine?

A. No, it was not.

(Signed) MARIE CARRAU.

[SEAL.] —— ——,

U. S. Master in Chancery.

Redirect examination.

(Mr. HAYS:)

Q. At the time that you filed your answer in the State court, did you know where I was?

A. Yes, you were East.

Q. I was East?

A. Yes, sir.

Q. That was afterwards prepared by whom?

A. By Mr. Houser.

Q. By Judge Houser?

A. Yes, sir.

Q. Did you ever tell Judge Houser the facts concerning your engagement of marriage?

A. No.

Q. Then Judge Houser, in writing this answer, wrote it from what he got from other sources than you?

A. Yes, sir. I think he read these things to me, but he read it so fast that I could not understand what he said, but I think he
577 mentioned it, and I told my sister afterwards that I thought he said many months that he made that mistake, but I knew that it was not many months, and I believed that he had put it that way, and I said to my sister that he read so fast that I could not understand it.

Q. Then you did not authorize him or did not intend to make the allegation that you had been engaged to be married many months?

Mr. HOWE: I object as leading.

A. No, because everybody knew how long Mr. Sullivan had lived in the house.

Q. Now, Miss Carrau, when you answered Mr. Howe that your brother, in consulting Mr. Littell, did he ever consult Mr. Littell for you?

A. Yes.

Q. Now, understand, did he ever go and consult Mr. Littell for the purpose of consultation as a lawyer?

Mr. HOWE: I object as leading.

Mr. HAYS: The witness is not familiar with the language, and I desire that she have an opportunity to fully understand it.

A. No, he did not consult him.

Q. Now, for what purpose did he go to Mr. Littell?

A. To compel him to give up the will.

Q. To compel him, if he had a will. Now, at that time, did he tell Mr. Littell that Mr. Sullivan had made this oral will?

Mr. HOWE: I object as leading.

A. I think that he did.

Q. Did he tell him that he had made a will at all?

578 A. No, he did not say that he had made a will.

Q. What did he tell him, what did he tell Mr. Littell, if you know?

Mr. Howe: Were you present at the *conversation* between Mr. Littell and Mr. Daussat?

A. No.

Mr. Howe: I object as incompetent, irrelevant and immaterial.

Q. You have answered on cross-examination, by Mr. Howe, that your brother-in-law, Mr. Daussat, told Mr. Littell about this will. You evidently did not understand this question and your answer—I desire you now to explain what you understood that your brother, Mr. Daussat, did actually tell Mr. Littell, what did you understand that he said to Mr. Littell concerning this oral will?

A. I think he told him; I don't know.

Q. You think that Mr. Daussat told him?

A. Yes, sir.

Q. What did he tell you that he told Mr. Littell?

A. Well, he told me that he had said the words.

Q. Did he say to Mr. Littell in these words, "Mr. Sullivan made an oral will"?

Mr. Howe: I object as leading.

A. No.

Q. Then when you answered Mr. Howe, you did not mean to be so understood?

A. Indeed I did not mean to be so understood.

Q. Speaking about a wedding trousseau, Mr. Howe asked
579 you whether you had prepared a wedding trousseau. Did you, as a fact, before Mr. Sullivan took down sick, take any steps looking to the preparation of a trousseau?

A. Yes, I had gone to see a tailor.

Q. You went to see about getting a tailor-made dress?

A. A gown.

Q. Did you consult with anyone?

A. I did, an employee of the Lace house.

Q. Why did not you complete your investigation and prepare the wedding trousseau?

A. Because he was sick.

Q. He took sick?

A. Yes, sir.

Q. Now, Miss Carrau, you in answer to Mr. Howe, about a certain conversation on the 8th of September that you had with Mr. Sullivan, in which you made your engagement of marriage, in what position, if you remember, were you sitting upon the sofa?

A. Well, Mr. Sullivan was sitting near the door.

Q. To your right or your left?

A. To my right.

Q. Then you were sitting to Mr. Sullivan's left?
A. Yes, sir.
Q. And was his right side towards the door, entering from the *hall to that parlor*?
A. His right side.
Q. Now, your left side was then towards what door?
A. Towards the sitting-room door.
Q. That is the folding door?
A. Yes, sir, the folding door.
580 Q. Was there any means of entrance from the sitting-room from the hall other than through the parlor?
A. Certainly, the sitting-room door. In the hall there is a door opening to the hall.
Q. Going from the hallway, you would not pass through the parlor, of necessity?
A. No.
Q. Could Mrs. Eames have passed through the sitting-room unnoticed by you?
A. Certainly.
Q. And had she so passed through the sitting-room would you necessarily have seen her or not?
A. No, of course not.
Q. She might have passed through without your seeing or without your knowledge?
A. Oh, yes, sir.
Q. In answering a question of Mr. Howe's as to the words which you have reduced to writing, and which were filed, you have stated that you are not positive whether the original or whether the writing that you made the night before Mr. Sullivan died, was before you or not?
A. Yes, sir.
Q. Are you certain or uncertain whether you had that in your hand?
A. Well I am certain that I had it.
Q. You are sure that you had that before you?
A. Yes, sir.
Q. Then this was not intended to be an exact copy of the original writing, that you had drawn out the night before?

Mr. HOWE: I object as leading.

A. No.
581 Q. Was it intended to be an exact copy as to the words spoken?
A. Yes, sir.
Q. Was it intended to be an exact reproduction of what Mr. Sullivan had said?
A. Yes, sir.
A. Miss Carrau, is it not a fact, to refresh your recollection, that you did pay me something like $250 in money?

A. Yes, sir.
Q. You do not know to what use I have put that money?
A. No.
Q. You understand that when you paid it over that it was to be used for the payment of expenses?
A. Yes, sir.
Q. And as a fact, you do not know whether I did pay the filing fees in this case or our appearance fees in the Federal court or not?
A. No.
Q. When you answered Mr. Howe that you knew that Mr. Riddle had not paid that appearance fee, you answered from your impression?
A. Yes, sir.
Q. You supposed that I had paid that fee?
A. Yes, sir.

(Mr. HOWE:)

Q. Miss Carrau, at whose suggestion did you make this copy?
A. At nobody's—nobody but my own.
Q. Why you did it you do not know?
A. No.
Q. And why you wrote the original you do not know?
A. No.
Q. Did you give to Mr. Hays this copy of the original and the original at the same time?
A. Yes, sir, at the same time.
582 Q. Now, going back to the conversation in regard to Mr. Littell, just state what you understood your brother said to Mr. Littell?

Mr. HAYS: I make the same objection made by counsel originally, as being hearsay. Unless she was present at the conversation that took place between Mr. Daussat and Mr. Littell.

Q. What did your brother tell you that he had told Mr. Littell?
A. He told me that he told Mr. Littell that I wanted or requested him to go to him and ask him to produce a will, to have a will produced, and he told him what Mr. Sullivan had told him.
Q. What did your brother say, did your brother say the words that Mr. Sullivan said?
A. Yes, he said——
Q. What did your brother say that he said to Mr. Littell?
A. He says to Mr. Littell that Mr. Sullivan, on the night before his death, that he called the family together and they went upstairs, and then Mr. Sullivan, as soon as they entered the room, Mr. Sullivan spoke these words to them.
Q. What words?
A. "I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars to be the

money and property of your sister Marie. I am sick and we know not what might happen."

583 Q. Now, did your brother in telling you what he told Mr. Littell repeat these very words?

A. No, he said that he told him.

Q. Did your brother say that that is what he told Mr. Littell?

A. Yes, sir.

Q. At the time that you went to see Mr. Hays first, you did not have either the original or the copy with you?

A. No, sir.

Q. Did you repeat the words to Mr. Hays?

A. Yes, sir.

Q. And did you repeat them just as you have testified?

A. Yes, sir, just as I testified.

Q. And in that same way?

A. Oh, I do not know, I could not tell you whether in the same way but I suppose so.

(Signed) MARIE CARRAU.

(Testimony of witness closed.)

[SEAL.] ——— ———,
U. S. Master in Chancery.

SEATTLE, *March* 11, 1902.

Miss MARIE CARRAU, recalled in rebuttal, testifies as follows:

(Mr. HAYS:)

Q. Miss Carrau, examine that paper and the signature, especially, and state whether you have ever seen it before.

A. I think I have seen this paper.

Q. Is that your signature?

A. Yes, that is my signature.

584 Q. Now, Miss Carrau, I want to ask you where were you when you signed that paper?

A. I was in Mr. McCutcheon's office.

Q. Colonel McCutcheon?

A. I don't know.

Q. Miss Carrau, do you know the circumstances of the day when you signed this paper?

A. Yes, sir, I think I remember.

Q. How did you come to sign it?

A. That day it happened I came down town and I went to do some shopping, and I happened to go to see my brother at the restaurant, and my brother told me that Mr. McCutcheon had asked him to sign a paper for him to be appointed administrator of John Sullivan's estate, and he told me that he wanted my sister Mrs. Daussat, to sign it, to have him appointed, and I said, "Augustine has no time to come down; will I not do myself, can I do as well?"

and he said, "Well, I think so. I don't think that McCutcheon will object to it," so we went together, and we went upstairs and my brother introduced me to Mr. McCutcheon. In fact I believe I had met Mr. McCutcheon before down at the restaurant and my sister had introduced me to him, and then he asked him if I would do just as well to sign the petition, and Mr. McCutcheon says, "Oh, yes; it don't make any difference to me."

Q. Then was this petition furnished you, offered to you handed to you then, at the time that you called at his office, for your signature?

A. It was handed to me to sign.

585 Q. Did General McCutcheon, while you were there, write out this petition there in pencil on a separate paper, or transcribe from that pencil paper on to this by typewriter?

A. He did not write anything at all, he just talked to me.

Q. Talked to you?

A. Yes, sir.

Q. And he had this paper already prepared that he submitted to you?

A. Yes, sir, he did.

Q. Then his statement if he made such a statement that he first wrote out this paper in pencil, in your presence and in the presence of your brother, while you were there, and that he himself had turned to the typewriter and wrote it out himself?

A. Did he make that statement?

Q. Yes, he made that statement?

A. Then the man is crazy, the man is off his mind because he never did such a thing, and I wish he were here.

Q. Well, he swore that he was in his right mind this morning, but he looked as though he might be a little off.

A. I think he certainly is if he said such a thing. He is certainly.

Q. Now, Miss Carrau, did you at — time or at any time state to General McCutcheon that you were a creditor of John Sullivan or that John Sullivan was indebted to you?

A. No, sir, for if I had said such a thing I would not have said the truth. I was not a creditor of John Sullivan at all.

586 Q. Well, you never stated or intimated such a thing to General McCutcheon?

A. No, he did not ask me either.

Q. He did not ask you whether you were a creditor?

A. No, sir.

Q. Did your brother, Louis Daussat, after you had signed this paper, submit to you any other paper for you to sign at the request of General McCutcheon?

A. Yes, sir, he did.

Q. And did you sign that paper?

A. No.

Q. If not, why not?

A. Well, I don't know. I thought that it might prejudice me, my interest.

(Signed) MARIE CARRAU.

[SEAL.] ——— ———,
U. S. Master in Chancery.

Cross-examination.

(Mr. HOWE:)

Q. I now show you the original petition for the appointment of Mr. McCutcheon, as administrator for the estate of John Sullivan, and ask you when you first saw this paper?

A. At his office.

Q. At whose office?

A. At General McCutcheon's.

Q. Who was with you at that time?

A. My brother, Louis Daussat.

Q. And that is the first time that you saw the paper?

A. Yes, sir, that is the first time.

Q. And I understand you that then it was all written out?

A. Yes, sir all written out.

587 Q. And did you read it?

A. No, I did not read it.

Q. Did anybody read it to you?

A. No, he did not read it to me.

Q. Why, then, when Mr. Hays handed you this paper did you have to take and read it to see whether this was the paper that you had seen in Mr. McCutcheon's office?

A. I did not know what it was. I just read that because I wanted to know what I was reading. I could not answer what it was, I did not know what it was, what he handed to me, I thought it was a petition for me to sign or something that way.

Q. Why did you have to read it when Mr. Hays handed it to you?

A. To know what it was.

Q. It was not to see whether it was the same paper that Mr. McCutcheon showed you?

A. No.

Q. And when you read it over did you know it was the same paper that Mr. McCutcheon had you sign?

A. No.

Q. How do you know then that it is the same paper?

A. Because I signed this and I see it is something about Mr. McCutcheon.

Q. That is the reason that you give?

A. That is the reason.

Q. Now, what is the paper that your brother showed to you as coming from Mr. McCutcheon and that you would not sign because you thought it might prejudice you?

A. I don't know.

Q. What prejudice do you think that it could do you?

A. I do not know.

588 Q. Who told you that it might prejudice you?

A. Nobody but myself.

Q. But you did sign this paper?

A. Oh, he put so much insistence to sign, I did not know that it would do me any harm.

Q. Who put so much insistence?

A. Mr. McCutcheon.

Q. But Mr. McCutcheon did not show you the second paper, did he?

A. But I was wondering what he wanted me to have two papers signed.

Q. What was it about?

A. I could not tell you; I do not remember.

Q. Can you tell any words that were in it?

A. No. I think it was about the same as that. I think. I do not know at all because I do not know what it contained at all.

Q. And although you had signed this one you would not sign the other one, is that so?

A. Yes, sir.

Q. Now, what harm did you think it would do you?

A. I did not know, I did not know what harm. I was afraid it would injure me.

Q. Injure you in what respect?

A. In respect to the will.

Q. But that was after the priest had told you that the lawyers said that the oral will was no good.

A. Yes, sir.

Q. But if the oral will was no good, how could the paper that your brother showed you, do you any harm?

589 A. Well, I did not know, I did not want to sign it.

Q. Now, when you were here the other day, do you remember that you testified that you were absolutely positive that Mr. Sullivan never left the house after the 18th of September?

A. Yes, sir.

Q. And you remember that *he* testified that he never put on his day clothes after that?

A. Yes, sir, I positively say so.

Q. And you still are positive of that fact?

A. Yes, sir, still positive of that.

Q. Now, I call your attention to the "Post-Intelligencer" of September 27th, 1900, of Thursday?

A. You can see everything you want in the papers.

Q. I call your attention to the statements of Doctor Carmen?

A. Yes, sir

Q. He was the doctor of Mr. Sullivan?

A. Yes, sir.

Q. He is now in the insane asylum?

A. Yes, sir; that is where he is.

Q. Now, I call your attention to this statement and ask you whether it does not change your mind: "Doctor S. Carmen, who has been Mr. Sullivan's physician for the past fifteen years, and who knew him intimately, in speaking of his unexpected death said, yesterday: Shortly after Mr. Sullivan returned from Europe I prescribed for him for some trifling ailment and he seemed in excellent health and spirits. On September seventh he again consulted me, after having contracted a severe cold, which rapidly de-
590 veloped into congestion of the lungs. I summoned two physicians in consultation and on Saturday last we agreed that his condition warranted the belief that he would speedily recover. On Monday last he became restless of confinement and imprudently walked down town from his apartments at 1413 Seventh avenue. He entered my office gasping for breath and I summoned a carriage and had him driven to his room. This morning he arose at seven o'clock, partook of a hearty breakfast, but when the waitress returned to clear his table she found him dead. Mr. Sullivan had for years been subject to a slight form of heart disease and this was undoubtedly the immediate cause of his death, by the weakened condition in which his recent attack had left him." Now having read you that piece, do you not think that you might be mistaken in saying that he did not leave the house after the 18th of September?

A. No, I will tell you all the facts of Mr. Sullivan's illness. I did not tell it all the other day.

Q. Now, do you remember Mr. Sullivan being driven from down town up to your house on Monday before he died?

A. No, he was not. You see I made a mistake, you see it was on Tuesday.

Q. Before he died?

A. No, the week before he died, on the 18th.

Q. Then you think that when Doctor Carmen on Thursday the 27th of September, 1900, said on Monday last, he made the mistake of an entire week?

591 A. Yes, sir, a mistake of an entire week and everybody can tell you that. Everybody knows it around the house.

Q. Now, you think that Doctor Carmen made a mistake of a week?

A. Certainly, of nine days.

Q. How could it be nine days?

A. From Tuesday to Wednesday, that is nine days.

Q. I call your attention to the fact that Doctor Carmen is speaking on the 26th of the 27th of September.

A. Yes, sir, that don't make any difference.

Q. Now, the Monday before that would have been—Doctor Carmen says it was the Monday, the 24th of September that he was sent home?

A. He is mistaken; it was on the 17th.

Q. And you think that you would remember that better than the doctor?

A. I remember everything that did happen there when poor Mr. Sullivan got sick, and if you will allow me I will tell you all about that. When Mr. Sullivan was first sick he complained to me about a pain in the chest, he said it was very slight and after his meal, he had always had that pain; for a long time he had had it but he thought it from an excess of smoking. Now, on Saturday before he took to his bed, that was the 15th, in the morning, in going out from breakfast he walked to the parlor and told me that we were going to have a chat together as usual. Then he sat down and instead of talking to me he was silent, he did not say a word. I felt his silence very heavily and I wanted to break it. I got up and showed him the flowers in a vase and make a remark, how beautiful they were.

592 Mr. HOWE: I object to the statement as not responsive to the question and as irrevelant, incompetent and immaterial.

A. Then I told him after a while, he says, "I am going down to the office," and I says—I wanted to know what the matter was—and I says, "What is the matter?" and he says, "I want to go to my office," I was very anxious and he was going to talk to me and then he went out. I was very anxious all day long and then at three o'clock he came back and I went to him and asked him, "What is the matter with you? I have been very anxious." He says, "I don't know: I felt very funny this morning, I had a weak spell," he said, "And it is for that, that I fled from you." I says, "You know, Mr. Sullivan, I am your best friend and at that time that I must know everything that happens to you." "I know that," he says, "I know that but I did not want to show you my weakness." Then he says to me, "But I went to my lunch and I felt first-rate. I felt first-rate." Then in the evening again when he went to his room; that was on Saturday; on Sunday morning, when he came down to breakfast, he said, "I thought I would never get to my home yesterday, it took me a long, long time to climb the stairs and I had that shortness of breath then," and he told me before that he had consulted the doctor about it and that Doctor Carmen says he did not know anything about that weakness and I said that was strange, and then I told him that I wanted him to consult three doctors, and he told me that he had three doctors in his office in his
593 building, Doctor Carmen, Doctor Lyons, and Doctor Vonberg. I says, "Doctor Vonberg is a very good doctor," he is a German doctor, and I knew him and I had heard about him and Dr. Lyons belonged to my church, so I told him to see these three doctors and he told me in *in* fact that Dr. Vonberg, that he was a very good student and was studying all the time, and then after lunch I told him not to go down to his office but have the doctors call, but

he wanted to go, he did not want to show that he was weak. Then he went down and had a consultation of these three doctors, and as I made the statement before the doctor told him that he had a bad cold, that his lungs wanted air, his left lung wanted air, and it pressed on his heart and gave that shortness of breath. Then he spent the afternoon with us and that Sunday. Then on Monday morning he took hardly any breakfast, he could not eat any breakfast or but very little and then we told him again not to go down to his office, but he would not listen to me. He says, "Oh, yes, I feel quite well, I will go. Then he went and about two o'clock he came back again and he told me that he had seen Doctor Carmen again, and Doctor Carmen understood nothing of his weakness, that he did not know what had produced the weakness. Then he told me that Doctor Vonberg—and then I says, "Did not Doctor Carmen examine you?" and he says, "No, he did not examine me but Doctor Vonberg did, and he used his instruments, the latest instruments
that came from Germany." This same evening he was breath-
594 ing very heavily and he was reading a book in the parlor,
and we had very little talk and he retired quite early. He said he had not slept well that night and he was going upstairs, and then I went to my sister's room and my heart felt very heavy. I went to my sister's room and she had a sick headache, and I went to my room and knelt by the side of my sister's bed and cried. My heart was very heavy. Then on Tuesday he got up, he got up and he ate very little and then he went again—I asked him and begged him not to go down and, "Well," he says, "I am not going down." Then I went upstairs and fixed my hair and then I saw Mr. Sullivan going out, and then I went on the steps and I says, "Mr. Sullivan, are you going out? You must not," and he says, "I am going to go just to the corner and take a little fresh air," and then I will come back." "Well, I do not think that is good for you but you ought to stay at home," and "Oh, no," he says, "I am going, I feel better and I want to go," and then he went to the corner, and my sister watched him, my sister Augustine Daussat, she saw him take the car at nine o'clock and about ten o'clock I heard my sister call me and she says, "Marie, Mr. Sullivan is coming back in a carriage." And so I went to the door and there he was. He was standing there as pale as death and I went to him to meet him at the gate and he got out of the carriage and he spoke to the driver of the carriage two or three minutes. Then I says to myself, "He must not be very sick," because he talked
to him—then he came in the house and he told me that
595 the doctors were coming, Doctor Vonberg would tell him the
truth, and then he told me that the two doctors were coming, Doctor Carmen and Doctor Vonberg, to see and to examine him again. So we had a little soup prepared for him, of course he could not eat very well in the morning and we had made some soup for him and then he says, "No, I don't want it," and I says, "Please take it," and he says, "I will take it just to please you," and he took that soup and he said, "That is fine, it does me good." "Well, I

thought it would do you good," I says. Then he went to lay down. He had in his hands a book—I remember it well—from the library, and then he went to lie down on the lounge and then he went to sleep and then the two doctors rang the bell and I went to them and they came, and I says, "Mr. Sullivan is asleep now," and they said, "All right, we are going to come in and see him." And they came in and I went out and they took him upstairs and took him to bed.

(Mr. HAYS:)

Q. Was that on the 18th?

A. On the 18th, yes, sir. And then the doctor asked him a little while after—Doctor Carmen came down and asked for a mustard plaster and I did not know how to make a mustard plaster and my sister did not know either. And so I went to call Mrs. Eames to make a plaster. But Mrs. Eames was not at home. I tried to get Mrs. Seckler and I found Mrs. Seckler on the sidewalk, and I told her if she would be kind enough to come to show me how to make a mustard plaster, and she says, "What is the matter?" and
596 I said, "Mr. Sullivan, you know, the gentleman that is boarding with us, is very, very sick, and the doctor wants a mustard plaster, and she came in and made one, and I brought it upstairs, and then they opened the door and I saw Doctor Vonberg was there and had his instruments on his ear and on Mr. John Sullivan's breast, and he was examining him. It was a big mustard plaster that covered all his breast. Now, that was on Tuesday. Then after while Doctor Vonberg came down and we were all very anxious to know, and we asked him, "What is the matter—is he very sick?" and he says, "No," And I said, "Everyone thought because you asked for a mustard plaster that he was very bad," and he says, "No, it is not going to be very bad," but I says, "Do you think you can pull him through?" and he said, "Well, I think so; I do not think there is any danger," he said. Then I told him—I asked him if he was going away and I says, "Doctor, I wish you were going to stay," and he says, "Doctor Carmen is going to stay; you know that I am only a consulting doctor; I am not his physician, I am just a consulting doctor and unless they call for me again, I will not come back." I told him that I wished he would stay. I was not confident of Doctor Carmen because you see he did not know what his sickness was, and then the doctor said that he would come on Wednesday to see the effect of the mustard plaster, and when he left Doctor Carmen came in and said that he was much better, that he felt much better. Then the doctor came on a
597 morning at nine o'clock, before going to his office, to see the effect of the mustard plaster, but at nine o'clock he did not come.

Q. Now, as a matter of fact, then, Mr. Sullivan was not out of his room from the 18th of September until his death on the 26th?

A. No, sir.

(Mr. HOWE:)

Q. Do you remember testifying the other day in regard to your being and Mr. Sullivan's being in the parlor, when he asked you for your answer and you gave him your answer?

A. Yes sir.

Q. What did you do after that?

A. After that I went to tell my brother about that.

Q. Where was he?

A. I think he was at home, in the dining-room; it was the dining-room but now it is the sitting-room. He was in his room and that was downstairs where we have now the dining-room.

Q. It is the room that is now the dining-room?

A. Yes, sir, but at the time it was his room.

Q. At that time it was his room?

A. Yes, sir.

Q. And does that room open into the parlor?

A. No, it opens into the sitting-room.

Q. And the sitting-room opens into the parlor?

A. Yes, sir.

Q. Since giving your testimony here the other day have you talked the matter over with Mr. Hays?

A. No.

Q. Have you talked it over with your sisters?

A. No.

598 Q. Have you talked it over with your brother-in-law?

A. No.

Q. None of you have talked about this case since you were here last time?

A. No, if we have it is a very little.

Q. But you have not gone into what the different ones have testified?

A. No, indeed.

Q. And you have only had very little talk about the case?

A. Yes, sir.

Q. Hardly any?

A. I have talked enough about the case, I was very tired.

Q. You have not talked it over with Mrs. Eames?

A. No.

Q. And you have not talked it over with Mrs. Seckler?

A. No.

(Signed) MARIE CARRAU.

(Testimony of witness closed.)

[SEAL.]

——— ———,

U. S. Master in Chancery.

SEATTLE, 2 P. M., THURSDAY, *March* 20, 1902.

Present: The master in chancery, Mr. Howe, Mr. Hays.

The witness, Miss MARIE CARRAU, having heard read her testimony as transcribed, and being now present for the purpose of correcting the same, the following proceedings were had and testimony taken.

599 MASTER IN CHANCERY: The witness desires to make the following correction on page two hundred and one, of the record, line twelve, where it reads: "He told me to be sure to remember the name of the bank that it should be checked."

(MASTER IN CHANCERY:)

Q. I understand, Miss Carrau, you desire to change that?"

A. Yes, sir. That should be "The law firm that issued the check."

Q. So it would read, "He told me to be sure and remember the name of the law firm that issued the check;" is that correct?

A. Yes, sir.

MASTER IN CHANCERY: On the same page of the record, line twenty-five, the witness desires to correct the answer to the question, "That he had no relatives," the answer being as follows: "No relatives, no one to leave his property to, and if I consented to be his wife and he would leave me everything, everything that he possessed with the mines, because he had no one to leave it to."

(MASTER IN CHANCERY:)

Q. You desire to correct that answer, Miss Carrau?

A. Yes, sir. He said that there was a great disparity of the age between us, but he thought that he could make me happier than a young man could and he would give me everything, and I told him I thought because of his good disposition towards me I would consent to be his wife. He said that he would give me every-
600 thing, everything that he possessed would be mine. I did not say anything about "the mines."

Q. That is the correction that you wish to make?

A. Yes.

MASTER IN CHANCERY: At page two hundred and twenty-six, line one, of the record, the answer of the witness, "That day—I cannot remember—I do not believe there is a woman lives that could say these things—it is better to keep them to one's self." The witness while I was reading her testimony to her said that was not what she said. She said, "I do not believe it is womanly." She wanted to make that change.

(MASTER IN CHANCERY:)

Q. Is that correct, Miss Carrau?

A. Yes, womanly.

Q. It would be, "I do not believe it is womanly"?
A. Yes.
Q. The answer would be, "I do not believe it is womanly to say these things; it is better to keep them to oneself"?
A. Yes.
Q. On page two thirty-seven, line one, the question, "He told you at that time about the property?" the answer is, "He told me at that time too, and said he had no one on earth, hardly any friends, what he could call, he had no relatives of any kind and he would leave," it reads here "leave;" you want to change that, to "give"?
A. Yes.
Q. "And he would give everything to me, everything that
601 he possessed would be mine, and he expressed himself very strongly." Is that the way you want that change made?
A. Yes.
Q. On page two fifty, line two, in answer to the question beginning at the bottom of page two forty-nine, "Did he say anything to indicate that he thought that he might die at once"? The answer is, "He said he felt very sick." You said to me yesterday, Miss Carrau, that you wished to change the word "sick" to "weak"?
A. Yes.
Q. That is the change you wish to make?
A. Yes.

(Mr. HAYS:)

Q. Then you should change your answer to the next question, too; the question is, "Felt very sick?" and your answer is "Yes, sir." Now, do you want to make any change there?
A. Yes, because I did not know that he felt very sick; he felt very weak.
Q. Very weak?
A. Yes, sir.
Q. Then you would answer that answer "Yes, sir," in these words, "Felt very weak"?
A. Yes, sir. I did not say very sick; I meant to answer very weak.

(MASTER IN CHANCERY:)

Q. On the same page, line twelve, you said you wished to change the answer to the question, "You did not telephone for his doctor?" The answer here is, "The doctor was not at the office, and Mrs. Eames——" You said yesterday, Miss Carrau, that you wanted to change that in this way: "The doctor had no telephone in
602 his residence, and Mrs. Eames——"
A. Yes, I meant Dr. Eames—no, I meant that Dr. Carman had no telephone in his residence.
Q. The doctor—that is, Dr. Carman—had no telephone at his residence?
A. Yes.

Mr. HAYS: I think you are mistaken in that, because you say further down—here is the way it reads: "A. The doctor was not at his office, Mrs. Eames——. Q. How do you know that? A. Because I know. Q. How do you know? A. Because the doctor never wanted a telephone in his house." I think you are mistaken in that correction.

Mr. HAYS: I think you are mistaken in that correction, are you not, Miss Carrou?

A. I was confused and did not know which doctor was meant, because I knew all the time that Dr. Eames did not want any telephone in his house; I did not know about Dr. Carman.

(Same questions and answers read to the witness again.)

A. (Continuing:) I was confused; I was very tired at that time; I had no lunch, no breakfast at all, and I got confused all together. I did not know what he meant. I got confused; when I said that the Dr. did not want a telephone in the house, I spoke about Dr. Carman, because I tried to find out and went to see one day and wanted to see about a mustard plaster, as that was about nine o'clock in the morning and I wanted him to come and see Mr. Sullivan before he went to his office, and I went to the tele-
603 phone and looked for his residence, because at that time in the morning I did not think he would be at his office, and I looked for it and I did not find the name, any number, any telephone—I did not find any telephone in the book.

Q. In your answer that the Dr. did not want a telephone in his house you refer to Dr.——

A. To Dr. Eames.

Q. You refer to Dr. Eames?

A. Yes, to Dr. Eames.

MASTER IN CHANCERY: At page two hundred and sixty, line twenty-three, the witness desires to make a correction, as she informed me yesterday when I read her testimony to her. This is the question, "What did you think these words were?" Her answer here is, "I thought it was the expression of a written will that he had made, a written will."

(MASTER IN CHANCERY:)

Q. Now you wanted to correct that yesterday, as the correction was lengthy and I did not make any memorandum of it. Now you may make that correction, Miss Carrau.

A. Well, it was when I heard those words I knew that it was his will.

Q. You thought you knew when you heard those words it was his will?

A. Yes, it was his will.

(Mr. HAYS:)

Q. You mean to say you thought you knew that it was his will or——

A. No, I knew that it was his will.

604 (MASTER IN CHANCERY:)

Q. Then this answer on line twenty-three, this answer to the question on line twenty-three; "I thought it was the expression of a written will he had made, a written will," is incorrect?

A. Yes, I made a mistake. After Father Sweere told me that an oral will was not good then I thought, I believe, that there was a written will.

Q. And that those words were——

A. Yes, just what was in the written will.

Q. Now, on page two sixty-one, the question beginning on line five, "Now, did you understand that the words which Mr. Sullivan had said when your brother and sister came in there that he was trying to explain to you that he had made a written will with these words in it?" The answer is, "Yes, sir." Now you said you wanted to correct that, Miss Carrau.

A. Well, at the time I did not think of it—did not think of anything at the time, you know. I do not think I thought anything. I thought it was—I knew it was his will, but it came to my mind, clear to my mind, when I wrote it with a pen.

(Mr. HAYS:)

Q. Came clear to your mind when you wrote it with a pen the next day?

A. When I heard the words I did not have any time to reflect, I did not think of anything but of those words so I remember them as they were, but now when I wrote them with a pen I knew that it was his will. I had time to reflect then, to think about it.

605 (MASTER IN CHANCERY:)

Q. Now you said you wanted to correct your testimony on page two sixty-two, beginning at line two: "And thinking that Mr. Sullivan had already made a written will you did not think it was necessary for him to sign this paper that you wrote down? A. I would not have asked him for the world to do that. Q. You would not have asked him to sign it, would you? A. No, certainly not. Q. Because you thought that had already been done? A. No, I would not have done so. It is not the nature of any woman, I would have had him to ask me to do that because I would think it would have embarrassed him too much. "Q. You thought the written will had already been made? A. Yes, sir, I thought so. I was almost sure. Q. Then you did not think that these words that he had spoken was the will itself?"

A. Yes, sir, I did.

Q. You say here, "I thought about nothing at the time but himself. Q. But although you were so much agitated after you left the room, within five minutes you had put these words in writing? A. Yes, sir, certainly, I wanted to go back to him. Q. Where did you first see Mr. Hays in reference to the matter?"

Mr. HAYS: Now, then, if she wants to make that correction, she wants to do that before Mr. Howe asks the question concerning me.

A. Well, what is the correction about?

(Mr. HAYS:)

606 Q. Here is the question, this is Mr. Howe's question: "And thinking that Mr. Sullivan had already made a written will you did not think it was necessary for him to sign this paper that you wrote down?"

A. I thought nothing at the time, I thought nothing, I thought of nothing but him. I did not think——

Q. Now you answered here, "I would not have asked him for the world to do that."

A. No, even if I had known it was not good I would not have asked him.

Q. Another question, "Because you thought that had already been done?" You answered, "No, I would not have done so," which is not an answer to his question. You evidently did not understand that question. Now another question, "You thought the written will had already been made?" Now your answer to that should be—?

A. I did not think of anything at the time, I did not think of anything at all at the time. When I heard those words I did not think of anything at all and I did not know—I do not want to be confused about this, I do not think I understood at all—no I thought nothing at the time at that moment, that night I did not think of anything, I did not think anything about it, I did not think he had written a will at all.

Mr. HOWE: I think the proper way, Judge, to make these corrections is for you just simply to call these matters to her attention and then let her make any explanations she wants to make of them.

Mr. HAYS: I think so, too.

607 MASTER IN CHANCERY: That is the course I have pursued all along but it was simply to call her attention to what she wanted to correct. I will read to you, Miss Carrau, and call your attention to the court. On page two seventy, line nine: "Q. How often was Mrs. Eames in and out of your house? A. I do not know I could not tell, sometimes five and six times a day and sometimes twelve times and sometimes more. Q. You never told her about this? A. No."

(MASTER IN CHANCERY:)

Q. Is that correct?

A. About the will—I did not tell her about the will.

Q. On line twenty-one, same page, "Q. What did Mrs. Eames say to you? Just repeat that, the day that she found you in distress. A. She consoled me, she told me first that, 'You must not grieve like that because Mr. Sullivan has outlived his life and I

never feel sorry for old people to die.'" You said that was not right?

A. No.

Q. You said you used the word- "lived out" and I wrote it down in pencil, making it, "lived out his life."

A. Yes. Lived out his life.

(Mr. HAYS:)

Q. You were attempting to quote here what Mrs. Eames said to you?

A. Yes. That means that he lived more than his life and lived out his time, that is what that means.

MASTER IN CHANCERY: Now, on page two eighty-six, line sixteen, this question was asked you: "Did you at that time tell Mrs. McElroy that you were to be married to Mr. Sullivan? A. No.

608 Q. When did you first tell anyone outside of Mrs. Eames and outside of your house that you were to be married to Mr. Sullivan? A. I told people, I told Mrs Hartnett."

(MASTER IN CHANCERY:)

Q. You wish to make a correction there, Miss Carrau?

A. I made a great mistake there. I do not know what made me make that mistake. I did not tell anything of the kind to Mrs. Hartnett. I told her to come to my house, I had something to tell her. That was a week after he died, and she did not come, and then the first time I saw her after he died it was in the paper and she knew all about it. I do not know how it could be I make such a mistake, and when I got home that day I telephoned Mr. Hays—as soon as I got home after I testified this and I told my sister, "What made me do that? I think I have lost my head altogether." I said, "It is nothing of the kind." She says, "You are mistaken, you did not say that." I says, "I am sure I did say that, and I do not know what made me say it. I did not want to say anything except what is the truth." Then I telephoned to Mr. Hays, Mr. Hays says, "You can change it, we will fix it when we go there."

Q. I think I have called your attention now to all the corrections that you intimated to me yesterday you would like to make?

A. Yes.

MASTER IN CHANCERY: I now turn you over to the gentlemen for further examination.

609 (Mr. HOWE:)

Q. Miss Carrau, what makes you want to change the expression "leave," when you were speaking of Mr. Sullivan and his property, to "give"?

A. Because that is the word that he used, you know, and I under-

stood and it was understood that he was going to give me everything when we were married, if I consented.

Q. You understood that he promised to give you everything that he had when you were married?

A. Yes, if I consented to marry him, to be his wife.

Q. That is, when you should marry him, he would give you everything is that it?

A. He said if I consent to be his wife he would give me everything he had, everything he possessed should be mine, that is what he said.

Q. Do you mean by that that he was to give you everything he had before you were married?

A. Everything that he had.

Q. Before you were married?

A. No, oh no, I do not think so, no.

Q. Was it after you were married?

A. Well, he did not express that way, that is what he said, "and if you consent to be my wife I will give you everything, everything I possess will be yours."

Q. When was it that he was to give it to you?

A. He did not say, but I understood——

Q. When did you understand he was to give it to you?

A. When he told me himself that he would give it to me.

610 Q. Did you understand that he was to give it to you before or after you were married?

A. I do not think it would be—I never—he said he would give me, if I would consent to be his wife, he would give me everything he had, everything he possessed should be mine—but if I would consent to be his wife, but I hardly think he would have given it to me before being his wife; I do not know.

Q. Which did you understand him to mean?

A. Well, I did not think of that at all.

Q. You did not think of that at all?

A. No, I did not think of that. It would be impossible to say what he had in his mind.

Q. Now, you remember, do you not, that when you were giving your testimony here before, the word that you used at that time was "leave," was it?

A. No, I do not remember at all.

Q. You do not remember?

A. No, I do not remember those words, but Judge read it to me it did not sound well, it did not sound well for me to say, "leave"—it was not what he said, it was, "give."

Q. Now since you gave your testimony here before have you talked about your testimony with Mr. Hays?

A. Not at all, no.

Q. Have you talked about your testimony with Mrs. Eames?

A. No, not at all.

Q. Has she talked with you about her testimony?

A. No, she did not talk to me about her testimony at all.

611 Q. You have seen Mrs. Eames since, have you not?

A. Yes, I have seen her frequently, just to speak to her.

Q. How many times have you seen her since you gave your testimony?

A. I do not know, but yesterday for the last time. She came to tell me yesterday that she was going down town, and if I will take her little sister-in-law—she was going down town at twelve o'clock to take her sister-in-law, her sister-in-law to the train to go to Portland, and if we will take her she will leave her little daughter with us for lunch—I mean her little daughter.

Q. Now, you also want to change your testimony so as to say that you did not understand at the time that Mr. Sullivan spoke those words that he was telling you what was in his written will, do you?

A. No, I did not think it was what was in the will, you know at the time. At the time that night I did not think so, I did not reflect either.

Q. When did you first think that Mr. Sullivan had made a written will?

A. When Father Sweere told me that an oral will was not good in this State—under the laws of this State was not good.

Q. And when did Father Sweere tell you that?

A. He told me that on Saturday after Mr. Sullivan's death.

Q. It was the Saturday after his death?

A. Yes, his death.

612 Q. That was the first time that it occurred to you that Mr. Sullivan had made a written will?

A. Yes.

Q. Up to that time you thought that what Mr. Sullivan had said to you was his will?

A. Yes.

Q. And you wrote those words down thinking it was his will?

A. Yes.

Q. Now, why did you make the copy on the pencil paper?

A. Because it was in pencil, you know, on soft paper, and I wanted to have it on hard paper, solid paper—no, it was pencil on the soft paper, and I wanted it in pen because the pencil, you see, was easy to—what you say?—it is hard to express myself.

(Mr. HAYS:)

Q. Would become erased, is that what you want to say?

A. Yes.

(Mr. HOWE:)

Q. Now, what made you write down his words in pencil?

A. Because I wanted to remember his words as he said them to me and I wanted to please him if he asked me if I remembered his will—his words, if he asked me if I remembered his words.

Q. At the time you wrote down those words with the pencil, did you think they were Mr. Sullivan's will?

A. Well, I did not reflect upon it, I did not think about anything at all.

Q. Then at the time he spoke the words you did not think about it much either, did you?

A. No, I just listened to his words and did not think at all.

613 Q. At that time you did not think those words were Mr. Sullivan's will, did you?

A. Why, I did not think about anything.

Q. I say, at that time you did not think when Mr. Sullivan spoke those words that he was making his will, did you?

A. I did not reflect about it at all.

Q. You did not think so?

A. I did not reflect.

Q. You did not reflect one way or the other?

A. No.

Q. And when you wrote down the words you did not write them down because you thought you were putting Mr. Sullivan's will in writing, did you?

A. I did not think of it—I did not think about this—I did not think about it.

Q. And when you wrote down the words in ink then you thought that they were Mr. Sullivan's will?

A. Yes.

Q. You are positive of that fact?

A. Yes, I am positive of the fact.

Q. And that was after Father Sweere told you the oral will was no good, or was that before?

A. No, that was before.

Q. What made you think when you wrote the words down in ink that they were Mr. Sullivan's will?

A. Because he told me that he wanted me to have everything, so I thought it was his will.

614 Q. Why did you not think it was his will when he spoke the words?

A. Because I did not reflect about it, I did not think about it at all, I thought of nothing but himself.

Q. Were you not very much agitated when you put his words down in ink?

A. Well, I was not so agitated as I was at night. I was sorry, I grieved, but I was not so much agitated.

Q. You were not so much agitated that you could not attend to the writing down those words as a business matter, were you?

A. No, I suppose so. I was grieving; I know I was grieving, but I was not agitated.

Q. But you were not grieving so much that you could not take such necessary steps to put that will in writing?

A. If I had been grieving even more that would not have pre-

vented me doing anything like that—anything that I ought to have done—anything that I ought to have attended to.

Q. When you got those witnesses to sign their names to that writing, you thought at that time you were getting them to sign their names to Mr. Sullivan's will?

A. Yes.

Q. And you did it for that purpose?

A. Yes, that is right.

Q. And you intended at that time, by writing those words down in ink and getting those witnesses to sign it, to put in written shape what you understood to be Mr. Sullivan's will?

A. Yes.

615 Q. And you had that in mind at that time?

A. Yes.

Q. And all the rest of you who signed that paper had the same thing in mind at that time?

A. I think so. I did not ask any of them.

Q. They understood that they were signing his will, did they not?

A. I think so. I never asked them at all.

Q. Yes, but at that — you understood that they knew what they were doing, did you not?

A. Well, it was in my mind that they were signing the real will, the good will, and I think it was in theirs, but I never asked them so.

Q. It was in your mind that you were making a good will?

A. It was in my mind that the words that he said was his will.

Q. And you were putting it in writing in ink and getting it signed so it would be a good will, were you not?

A. Yes, I wanted to know if they would remember the words that he said.

Q. You did not tell Father Sweere about that paper?

A. No, I did not tell him.

Q. What lawyer did you ask Father Sweere to see?

A. No one; I just request- him to see a lawyer—to have the kindness to see a lawyer, I did not name any lawyer in particular —anyone to see—a lawyer, that was all.

Q. Did he tell you what lawyer he had seen?

616 A. Well, I cannot remember what he said.

Q. Well, what is your best recollection?

A. He said—he told me he had seen a lawyer—yes, he told me that he had seen Mr. Kelleher about it.

Q. And then you concluded that Mr. Sullivan had made a written will, did you?

A. Yes.

Q. And the words that he had spoken were words that were in his written will, is that it?

A. Well, after Father Sweere had told me there was no other will—that the oral will was no good.

Q. Then you concluded that he had made a written will?

A. Yes.

Q. And those words were in that written will?
A. Yes, something like that in substance.
Q. Have you and your sister talked over your testimony since you gave it?
A. No, not at all.
Q. Have you and Mr. Daussat talked over your testimony?
A. No.
Q. Since you gave it?
A. No.
Q. Have you talked about this case since you testified?
A. No, not to anyone.
Q. Not to anyone?
A. Not to anyone. I am tired about the subject, so we changed the subject and talked about something else.
Q. Whenever the subject would come you would change it to something else?
A. No, not that, but it seems to be understood between us that we don't want to talk about it.
Q. You have not discussed it at all?
617 A. No, hardly at all, I can't say that, "not at all," but hardly at all.
(Signed) MARIE CARRAU.

Read to the witness by me, and by her corrected, and after corrections and examination by the solicitors of the respective parties, by her subscribed and sworn to before me this twenty-second day of March, 1902.

EBEN SMITH,
United States Master in Chancery and Special Commissioner, etc.

SEATTLE, *March* 7, 1902—11 o'clock a. m.

Present: The master in chancery. Mr. Howe, of counsel for complainants. Mr. Hays, counsel for defendant-.

By agreement of counsel, the hearing was continued until 2 o'clock p. m.

Afternoon session.

Present as at morning session.

By agreement of counsel, hearing continued until tomorrow morning at 10 o'clock.

SEATTLE, WASH., *March* 8, 1902—Saturday, 10 a. m.

Present: The master in chancery. Mr. Howe. Mr. Hays.

Proceedings continued pursuant to adjournment as follows, to wit:

618 LOUIS DAUSSAT, a witness for and on behalf of defendant-, called and duly sworn, testified:

(Mr. HAYS:)

Q. State your name, age and residence.
A. Louis Daussat; I was born in '48, that is 54 years; residence is 1417 Seventh street.
Q. Where were you born?
A. In South France.
Q. In what place?
A. I was born in the one city called Sumbrum, department of Haute Pierenes.
Q. When did you come to the United States?
A. '73.
Q. Are you a naturalized citizen?
A. Yes, sir.
Q. Are you acquainted with the defendant, Marie Carrau?
A. Yes, sir.
Q. What, if any, relation is she to you by marriage or otherwise?
A. By marriage; I married her sister.
Q. You married her sister?
A. Yes, sir.
Q. When?
A. I married her in Seattle, and I think that was in '92.
Q. Were you acquainted with John Sullivan, deceased?
A. Yes, sir.
Q. When did you become acquainted with him first?
A. The first he came and saw me in my business place, after he came back from Paris, and he said——
Q. When was this?
A. This was in—I think that was in August.
Q. In August?
A. Well, July—last days of July or August—last days of July, excuse me.
619 Q. Last days of July?
A. Yes.
Q. What year?
A. Well, two years ago next—it is '92 now, that was in '90.
Q. 1900?
A. 1900, that is right, some words I can't say.
Q. State what, if anything, he called to see you about at your place of business?

Mr. HOWE: Objected to as incompetent, irrelevant and immaterial.

A. He said he came back from Paris, and some people sent him to me because they know—he wants to learn French, and he said he wants to see if he can get a chance to get a teacher here in town, and somebody told him that my sister-in-law was a teacher of French.

He says he wanted me to take him and board him and the same time he take lessons, because he no want to take lessons unless he get a chance to board, get a chance to take all the time, and I told him I can't give him no answer myself, and he says, why, and I say, because I got to tell my family, my wife and my sister-in-law; I don't know whether they want to take a boarder. She teacher, she give French lessons, but I don't know whether they want somebody to board, and I say I let him know tomorrow, and he say, "You sure let me know tomorrow?" I say, "Yes." "Well," he says, "I come tomorrow and you let me know." The day after he come again in my business place in the Occidental café, and I say, "We decide we can't take you, you got to go yourself and make the
620 arrangement, and that is all I can tell you." He say, "That is all right; you give me the address and I go myself," and I give him the address and he go himself, and he make arrangements with my sister-in-law, my wife, and my family, to take him and board him there and teach him somewhat.

Q. Do you know who it was that sent him to you, did he tell you?

A. No, he no tell me.

Q. He did not tell you?

A. No, sir.

Q. Had you known him before?

A. I saw him before, never I talk with him before, because I many times some people remark, that is all, "That is old man Sullivan"—Mr. Sullivan, that is the way I know it was him.

Q. Now, when did he begin living at your house?

A. It was in August.

Q. In August?

A. In August.

Q. 1900?

A. Yes, sir.

Q. What acquaintance, if any, did you form with him after his coming there?

A. Yes, sir; we passed many times; I go sometimes home in the afternoon, generally, after my hours is out, and we talk many times together, and in the night time we stay in parlor very late generally together.

Q. You talked with him?

A. Yes.

Q. Visited with him?

A. Yes, sir.

621 Q. Now, Mr. Daussat, when did Mr. Sullivan take sick?

A. Well, he take sick—a little sick, that is—probably twelve days or two weeks before he die. A very little—very short illness.

Q. What do you know, if anything, about Mr. Sullivan having become engaged to be married to your sister-in-law?

A. Yes, sir. That is in the beginning of September. One day my sister tell me Mr. Sullivan asked her——

Mr. HOWE: We object to anything that Marie Carrau told to the witness on the ground that it is incompetent, irrelevant and immaterial.

Q. Go ahead.

A. And she told me, she got in conversation with Mr. Sullivan, and he want to marry her, and go with him to Paris, and she told me—she asked one week reflection, she want to talk with her sister and myself, her brother-in-law, she said, and she tell me and I told her that gentleman that I have known very, very long, and he got pretty good reputation in this place, and I can't see objection to her marrying him; another thing he got plenty of money. She said, "Well, that is all right." And after that she gave him the answer. They called me in the parlor, we take the hands, and talk a little bit and say, "That's all right," and everybody all right and enjoy it.

Q. When was that, Mr. Daussat?

A. Well, that was between three weeks—between two weeks and three weeks before he die.

622 Q. Do you remember the exact date of the month?

A. Yes, that was in September.

Q. What day of the month in September?

A. I can't recall it.

Q. You do not recall it?

A. No, I can't; too much things in my head, in my business; I can't recollect those things.

Q. How long after that was it that Mr. Sullivan took sick?

A. A very short time after.

Q. Well, give us about the time?

A. I can't recall the day.

Q. Was it a day, one day?

A. More than that.

Q. Two days?

A. More than that.

Q. Then give us about the number of days?

A. Well, very short days, probably five or six days; I can't recollect for sure; I can't recollect for sure that, because I don't stay home.

Q. Now, you were living there at the time of his sickness, and up to the time of his death?

A. Yes, sir.

Q. What occurred, if anything, prior, immediately prior to his death with reference to Mr. Sullivan?

A. Well, the 25th, the night before he died, about 11 o'clock, I am in the parlor with my wife, and my sister and my sister-in-law was upstairs; she called me and all the family, and I say, "What is the matter?" And she says, "Mr. Sullivan wants to see you all." All right, I go. We go upstairs and we find Mr. Sullivan breathing heavy, and he sat down in one armchair, and we go there all

623 around, and he look at me, look at everybody, and I say, "What's the matter?"

Q. You said, "What's the matter?"

A. What's the matter. He says, "Nothing, except I want to tell you some things." He say "I want you to remember and witness that I will all my property and personal effects, worth many thousand of dollars, to be the property of your sister Marie. I am sick, and I do not know what might happen." And that is all.

Q. What else, if anything, was said then?

A. I said, "Thank you."

Q. You said that?

A. I said, "Thank you," and my wife, and me, and Hermance, we go back downstairs.

Q. Went downstairs?

A. Went downstairs, because we got no room upstairs at that time.

Q. Now, what next occurred? What did you do next, if anything?

A. Well, sir, we went to bed, my wife and me, you know.

Q. Went to bed shortly after that?

A. Yes, after that.

Q. What time did you arrive in the morning, if you did arrive?

A. Well, generally six or half past six.

Q. Well, do you remember the next morning?

A. Yes, sir.

Q. What time was it you got up that morning?

624 A. Well, I got out of bed at half-past six, and I go down at seven.

Q. Did you, on that morning, see Mr. Sullivan any more?

A. Yes, sir.

Q. What time was it?

A. Seven o'clock.

Q. Under what circumstances did you see him?

A. Because I bring the newspaper in the morning.

Q. The newspaper?

A. The newspaper.

Q. To his room?

A. To his room, yes, sir.

Q. Was that your habit each morning?

A. Very near each morning; yes, sir.

Q. You would take the newspapers into his room?

A. Yes, except some morning the paper not come yet, you know, but when I find the paper on the front door, I bring it myself.

Q. Now, did you have any conversation with him?

A. No, sir.

Q. What did you do when you took the paper to him?

A. Well, I bring it to him and I say, "Good morning, Mr. Sullivan. How do you feel this morning?" I no get any answer at all.

Q. You got no answer.

A. No answer; no answer at all.

Q. Was he awake?

A. Well, he breathing very heavily.

Q. Breathing heavily?

A. Breathing heavily, and I think I better leave him, because he said when he was asleep to let him sleep.

Q. When he was asleep to let him sleep?

625 A. Yes.

Q. Have you been in the habit, during his sickness, each morning, of going in his room?

A. Yes, pretty near all the mornings.

Q. And what did you find about his being awake or asleep when you went in those mornings?

A. Well, very few times I found him sleeping, very few; nearly all the time awake.

Q. Always awake?

A. Yes, sir.

Q. And would you have some conversation with him those mornings that he was awake?

A. Oh, yes, I asked him what he want, and sometimes he tell me to give him some water or something, and I bring plenty of water.

Q. Give him water or something?

A. Yes that is all he wanted—water.

Q. Now what did you next do when you found he did not answer your "good morning" to him?

A. Well, I go back to down stairs and I go to my room and tell my wife, I say, "I think Mr. Sullivan is worse; I find him sleeping and breathing very heavy, and I am afraid," and my wife she say "Well, the doctor will come in this morning soon, and we will see what he says." I say "All right." Then I go to my work.

Q. Then you went to your work?

A. Then I go to my work.

Q. When did you hear of his death, if you heard?

A. Well, I can't recollect just the minute, but between eight and nine by telephone.

626 Q. Between eight and nine by telephone?

A. By telephone. My wife telephoned me. I am busy in the morning, you know, I can't recollect for sure; I no look at the time at all.

Q. Where were you then, at your café?

A. At my café, at work in the kitchen.

Q. What is it that impresses you that it was between eight and nine o'clock?

A. Because that is pretty near the time. I fixing my lunch, I know, pretty near the time, and I am very busy at the time; that is what makes me suppose it was after eight o'clock, between eight and nine.

Q. Now, what did you do when you heard that he was dead?

A. Well, I very astonished, and I tell my wife I go right away.

Q. Go?

A. Go back in the home.

Q. To your house you mean?

A. Go back to my house. She wanted to get me to come, and after that I leave the telephone, and I make my mind I want to telephone again not to let anybody touch anything in the house, because she call the doctor to come in there.

Q. Now, was this conversation you had when you went home, or over the telephone?

A. Over the telephone, but I can't get the telephone.

Q. You could not get the telephone?

A. No, I can't get no line.

Q. Now, did you go home?

A. I go home.

627 Q. What did you find when you got home?

A. I found Mr. Littell and Doctor Carman coming from upstairs, and Mr. Littell, he got a valise in the hand.

Q. A valise?

A. A valise, a big valise. I met them in the hall just in front of the door to the parlor, and Mr. Carman say, "I present to you Mr. Littell." I never knew him before. I say, "All right," and same time Doctor Carman said he wanted to telephone for an undertaker, and he can't get the line, couldn't get the line, and was very mad, and so I got myself, and the same time Mr. Littell and Mr. Carman go out.

Q. Went away?

A. Gone away, didn't say anything.

Q. Now, at the time you were present and heard Mr. Sullivan state those words, what did you understand him to mean—what was your understanding at the time of what he meant?

A. Well, I understand that is the will of what he gives to my sister Marie. I understand that is the will.

Q. That that was a will of all his property to your sister Marie?

A. Yes, sir; that is what I say.

Q. Now, was he at that time apparently of sound mind?

Mr. Howe: Objected to as leading.

A. Yes, sir; perfectly in sound mind, perfectly.

Q. Knew what he was doing?

628 Mr. Howe: Objected to as leading.

A. Yes, sir; perfectly.

Q. Was he free to act, was he free or was somebody compelling him?

A. No, sir, free.

Q. Or forcing him to do anything?

A. No, sir; free, free himself, he talked himself—free.

Q. Who else was present at the time of the making or the saying of these words, besides yourself?

A. Well, there was Marie, my sister in law and Hermance, my sister-in-law, and Augustine, my wife.

Q. What did you do, if anything, about reducing those words to writing?

A. Well, the day—the morning the man is dead——

Q. The morning he died?

A. The morning he died, I am home, come back from the restaurant, and my sister Marie they translate the—they present to me one paper, she put on the names—the words what Mr. Sullivan he said the night before, and she tell me if I no remember those are the words he said—that is the same words that Mr. Sullivan talked, you know—understand me? And I look and all my folks come and they look to know the writing, and I see and they see and we come to the conclusion that those were the real words that Mr. Sullivan said the night before, and we concluded to sign the paper—we sign the paper.

Q. Why did you sign that paper?

A. Because I am sure and believing that is the real will—
629 that is the will he make for my sister—that is the will, the real will.

Q. That was the real will?

A. The real will.

Q. Did you, at any time, learn differently or learn that that was not the real will, or a good will, if so, when?

A. Well, some few days after.

Q. How many days?

A. Well, I learn, I think, it is four days after, three or four days, that is on Saturday.

Q. On Saturday?

A. Yes.

Q. That that was not a good will?

A. No. That is no good will. My sister——

Q. From whom did you learn that?

A. For whom?

Q. From whom did you learn it—who told you?

A. My sister.

Q. That is your sister——

A. Marie?

Q. Marie?

A. Marie.

Q. What, then, did you next do with reference to Mr. Sullivan's estate, or Mr. Sullivan?

A. Well, after I know—after she told me that somebody told her that that will no good, I worried for her.

Q. You worried for her?

A. For her, and I say, "We got to see to find, probably, he got one written will, because he say them words." (The witness here added some words to his answer that were unintelligible to the stenographer, who asked the witness to repeat them.)

630 Mr. HAYS: He said that there was probably a written will and that——

Mr. JOHN B. WRIGHT: Just let him repeat it.

Mr. HAYS: I desire the record to show that Mr. John B. Wright appears at this examination as counsel for the complainants, and is making objections and taking part in the examination.

Mr. HOWE: We deny that Mr. Wright is appearing as counsel for the complainants, or that he is counsel for the complainant.

Mr. HAYS: Mr. John B. Wright is making objections to the testimony of the witness.

Mr. JOHN B. WRIGHT: No, I made no objection: just made a suggestion to you; that is all.

Mr. HOWE: We desire that the record show that the witness, having given an answer which was not understood by the reporter, Mr. Hays undertook to state what the witness had said, and Mr. John B. Wright made a suggestion that the witness should restate what he had said.

The MASTER IN CHANCERY: Proceed with your examination, Mr. Hays.

Q. What next did you do?

A. Well, I believe that way—after I heard that will no good, I believe he made written will, and we waited until this will was produced.

Q. Waited until it was produced?

A. Until it was produced.

631 Q. On the day of Mr. Sullivan's death, what was done, if anything, about removing his body to the morgue, and when was it?

A. I do not understand that.

Q. What was done about removing Mr. Sullivan to the undertaker's, if anything, what was done? Did you remove him to the undertaker's?

A. No, sir. That was the—Mr. Littell and Mr. Carman——

Q. Dr. Carman?

A. Doctor Carman took charge of that probably.

Q. And what was done, if anything, with his personal property, furniture, carpets, and so forth, that he occupied in his room?

A. Well, I go——

Q. Just answer the question.

A. After twelve o'clock.

Q. Just about what was done; never mind the details.

A. Well, they took it in the—they took Mr. Sullivan to the morgue, before I came back, before twelve o'clock, and I go back in my place and the night time I come back I find my wife say, "Some little while after you left the house, the same Mr. Littell, probably he sent one express, and they take the whole furniture that was in the room." And I was very sorry to let it go that way, because I say, "I forget to tell you before I go to no let them take anything in the house, because it going to belong to my sister."

Q. Because it all belong to your sister?

A. To my sister, Marie.

632 Q. Now, what did you do then, if anything, about seeing Mr. Littell, or any one else, about that that day?

A. Well, the day after, my wife and me, we go to the Sullivan building; we went to see Mr. Littell, what is the matter he take that furniture, and we no find Mr. Littell now in the room. We said he was probably in the room of Doctor Carman. Well, my wife say, "I don't want to disturb him; I don't want to go to see Mr. Carman at all," and we go back and my wife remarked, they got no crape on the door.

Q. That they had no crape on the door?

A. On the door.

Q. On the building?

A. On the building; and she say to the elevator boy——

Mr. Howe: I object to all this as irrelevant and immaterial.

Q. She says what to the elevator boy?

A. She say to the elevator boy, she say, "What is the matter you no got crape here? It is a shame, a big shame," and the boy say, "I don't know," and there we go.

Q. Did you go to the building upon your own account, or on request of anyone that afternoon?

A. I do not understand.

Q. Did you go there on your own account to the building that afternoon, or on the request of——

A. My sister requested me to go there.

Q. Your sister, Marie?

A. Yes, sir.

Q. What for?

633 A. Well, she wanted to see what is the matter. She tell my wife to ask me to ask Mr. Littell what is the matter they take all the furniture out of the house without the order.

Q. Is that all?

A. And she wanted Mr. Littell to send back the key to the house.

Q. Anything else?

A. No, sir.

Q. That is all that Marie requested you to go to that building for that afternoon, was simply to get the key and find out about the furniture?

A. About the furniture.

Q. And did not ask you to do anything else? Do you not recollect your telling me that she asked you to go and see if that building was draped in crape?

A. Oh, yes; about the crape.

Q. Why didn't you tell it then just as it was?

A. Yes, she sent me to the building and asked me to see whether there is crape on the house, that is why my wife and I make that remark.

Q. Now, Louis—just change that to make it "Mr. Daussat." I

am not so well acquainted with you—I apologize for addressing the witness so familiarly—you say you found that building had not been draped?

A. Yes, sir.

Q. And you complained, you and your wife, or your wife complained to the elevator boy?

A. Yes, sir.

Q. About it?

A. Yes, sir.

634 Mr. HOWE: Objected to as leading.

A. (Continuing:) Because they no got the crape there on the building.

Q. For not having the crape on the building?

A. Yes, sir.

Q. Did you attend his funeral?

A. Yes, sir.

Q. What was your position as an attendant at that funeral, yourself and family?

A. Well, they put me—they put all my family and me in the first carriage.

Q. The first carriage?

A. For the mourners——

Q. Next to the hearse? The hearse is the carriage that carries the body.

A. Next to the funeral.

Q. (Paper writing handed witness.) Look at that signature and read that paper, if you can?

A. "In the superior court"——

Q. No, not aloud, just to yourself.

A. Oh, Louis Daussat.

Q. Is that your signature?

A. Yes, sir.

Q. Under what circumstances did you sign that paper?

A. Well, this paper is a McCutcheon paper.

Q. Tell all about that.

A. The day before—the day after Mr. Sullivan died——

Q. Now, you don't—that date of that paper is what?

A. I know that is the——

Q. Can you read it?

A. No

Q. Well, that is October 5th?

A. October 5th, 1900.

635 Q. Well, the day after Mr. Sullivan die, I met—Mr. McCutcheon met me on the street, on the corner of Madison and Second, and he came in front of me, he say, "Hello, Louis." I say, "How do you do?"

Mr. HOWE: I object to all conversations between Mr. McCutcheon

and this witness on the ground that they are incompetent, irrelevant, immaterial and hearsay.

A. (Continuing:) And I say, "How do, Mr. McCutcheon?" And he say—he talk to me right away, and he say, "I am very glad to see you, because I want to make you appointed administrator for the estate of Mr. Sullivan."

Q. Wanted to have you appointed administrator for the estate of Mr. Sullivan?

A. Yes, wanted to make me appointed administrator for the estate of Mr. Sullivan. Well, I say, "All right," and he say, "You come and see me again some day." And I meet him again on so many days after, probably six or seven days after—I can't recollect sure what day—and I think it is in the Monday or Tuesday a week after, and that time he told me he change his mind, he want me, I sign the papers for him, making him—nominate him administrator of the estate of Sullivan.

Q. Nominate him administrator——

A. He in place of me.

Q. Of the estate of Mr. Sullivan?

A. Well, I say just the same, "All right," and he say, "The papers are already made," he say, "You bring your wife, and
636 you come and swear to these papers." I no look in the papers at all and I go back to my place of business, and this same afternoon my sister Marie come and see me in my place, and I tell her—I tell her what Mr. McCutcheon he wants with me, and I say, "He want Augustine, my wife, come and sign with me, the petition." Well, I say, "You come with me; probably you sign just the same as my wife, in place of my wife." She say, "All right." We came in the office of Mr. McCutcheon in this building, and there he talked to my sister what I say, that he say he want me wife and me to sign the papers and he say, "That is all right; you can just the same sign yourself"—he say that to my sister Marie.

Q. He said that to her?

A. To her, my sister Marie. So she say, "All right," and he present the papers; we no read the papers or anything, we sign the paper.

Q. You no read the paper you say?

A. No, sir.

Q. You sign it?

A. Because he is my lawyer before, and I have all confidence in him. Of course, I know he my lawyer for a long time, and we sign the papers, and then go back home and he say, "They all right." A few days after, I don't know, two days or three days after, he come in my business place——

Q. Who came?

A. Mr. McCutcheon come in my place and I very busy in the kitchen—I no got cook in the kitchen and I am alone; I got to

work myself alone—and he got in there, a gentleman with
637 him, and he offers papers—he offer me papers for to sign. I say, "Mr. McCutcheon, I very busy, I can't now do that." "Well," he say, "you can sign it; no take you long," he says, "just a minute or something." I say, "I like to see the papers." He say, "You believe me?" And I say, "Yes, but I like to see the paper anyhow." He say, "You no got time now, you can sign it just the same." He say, "I make something wrong, you know what you have got to do."

Q. He said if he did anything wrong, you know what to do?

A. He told me that. I say, "All right, I sign them papers." And I came home the night and tell my wife and my sister-in-law, Mr. McCutcheon come in to the restaurant again—I coming home I told my family Mr. McCutcheon came to me and wanted me to sign one paper with another gentleman, and I sign, and my family make the remark, "How come you sign the papers again? Did you see the papers or read the papers?" "Well," I say, "you see I am so busy, you know, and Mr. McCutcheon he is a gentleman for me, and I know him many times, and I can believe in him all right," I say, "If he make some wrong, I know what I got to do." "Well," she say, "all right, all right." A few days after he come in again in my place of business with another paper and he says, "Louis"—he came in alone——

Q. Came in alone?

A. Came in alone, and he say, "Louis, I want you to sign
638 this paper." About that time I am not busy; I got a man working there in the place or something—I got a little more time, and I say, "All right, I want to see the paper, Mr. McCutcheon." He say, "That is all right." I say, "No, by Gar; that is three papers I sign, now I like to see this," and "All right," he say, and I say, "You leave me this paper, and I will bring him home and show to my folks my wife and my sister," and I say, "We all see what we do, and I bring it back to you." He say, "That is all right," and give me the paper, and I bring it home, and at home I read all the paper, and all my family, and I conclude I don't want to sign the paper at all—we conclude we don't want to sign the paper at all, we have signed papers enough without reading the writing, you know, but I don't want to sign this paper, and I bring it back to Mr. McCutcheon, and then I say—I bring this paper and I say, "I don't want to sign."

Q. What is that?

A. I bring back this paper and I say——

Q. That you did not want to sign?

A. I no want to sign, you know, "I don't want to sign that paper, Judge, and I want you to give me back the first paper signed, all the papers signed by Marie and me; I want that paper.

Q. And all the other papers you signed?

A. And I say, "I don't know there is anything wrong, but I want it back." He say, "I can't do that, because these papers is

filed in the court." I am so mad I quit the office without saying anything, and I go back home.

Q. You are so mad, you say?

639 A. I am mad, very mad, because he no give me the papers back, and I want all those I sign, what I sign before, but he say he can't give it back because the papers have been filed in the court. That is all the talk I have with Mr. McCutcheon.

Q. Now, M. Daussat, what did you next do, if anything, about Mr. Sullivan's estate?

A. Well, I wait, I believe every day he got a written will; I believe he got a written will, and that they will surely come every day in public.

Q. Would be made public?

A. Would be made public, and I wait until Mr. O'Brien is nominated administrator, and then I hear he was made administrator and Mr. Piles, Donworth & Howe was the lawyers for the administrator. I waited a little bit, and we talked over it, and my sister inquired of me to see what she can do for the finding of the will, because we feel sure—she feels they got a will written.

Q. She believed they had it written.

A. Yes, and I tell them I would do what was possible, and I decide to go and see Mr. Littell, who was the administrator before, and he lose that job, probably I get something from him.

Q. After he had lost the position as administrator?

A. Yes, in case of the will probably he help me to find the will, and I go to see Mr. Littell, and I told him he no find any will in the papers or anywhere, that Mr. Sullivan he made? He say—he study a little while before answering, and he say, "No," and I say,

640 "This is very strange what Mr. Sullivan say one time, as he no got one will written. Well, he say, "I can't find the will at all; I do not see the will in the papers at all." Probably I don't know, he say, "I no find any papers," and he say, "Well, what you know—what you believe, they got the will written?" And I tell him, what Mr. Sullivan said the night before he died, and he say, "All right," he say, "He no got will—I may find the will, a written will," and he say, "If I know something, I will let you know."

Q. He said, if he found out anything he would let you know?

A. Let me know, and I quit the office, I say, "Good-bye, Mr. Littell."

Q. What next, if anything, did you do?

A. Well, after a little while, a few days, I go and see the lawyers of the administrator, Mr. Howe—I think probably he will recollect—and I told him as the lawyer of the administrator of the estate you know, they got the will—find the written will. Mr. Howe, he answer no, they no got the will—they no find it.

Q. That they did not find any will?

A. That they no find any will, and I told Mr. Howe what I believe they got the will, the written will, and I told him what Mr.

Sullivan—well, I told him here what that was, and he told me he no get the will, Mr Howe did.

Q. Mr. Howe told you he had no will?

A. He had no will, he no find any will in the papers of
641 administration, and I told Mr. Howe what I believed, they have got a written will.

Q. What did Mr. Howe say, if anything?

A. Well, Mr. Howe said, he no got the will, he no got the written will.

Q. No found any will?

A. No find any will.

Q. What next, if anything, did you do?

A. After Mr. Howe, I go and see Mr.—the judge—Mr. Judge Burke, because my sister is acquainted with Mrs. Burke, she teach in French along with her, and she require me to see Mr. Burke, what can help her to find the will, to compel the producing of the will: I say, "All right, I will do anything for you," and I see Mr. Burke. I find Mr. Burke, and Mr. Burke he knew me all right, and I know him, and shake my hand, and he says, "What me brings to him." I told him just the same as I told Mr. Howe and Mr. Littell, I came to see him for the Sullivan case, if he can compel the administrator or somebody to produce the will, because they no find the will at all now, and he say, "What you believe, they got the will, the written will?" I told him what Mr. Sullivan say the night before he die, and what I believe they got the written will and what my sister believe they got the written will, and I believe it too, and he say, "Yes, very strange," he says, "Very strange," he says, and he say, "I can't do anything for them, and if you find the will, you come and see me again."

Q. If you found the will to come and see him again?

642 A. "If you find the will, come and see me again," and I do what is possible for her to help her.". Well, that was the last gentleman I could see—that is, the last man I go see for this will—Mr. Burke.

Q. What next, if anything, did you do about the will?

A. About the will? I wait a little while, my sister kept worrying over it, we found the lawyers they can't do anything for her because she believes sure they got the will in writing, and she knows well Mrs. Hays, because she teaches sometime the little daughter of Mr. Hays, and she make the reflections, she say, "I make my mind, I know well Mrs. Hays and you know well Mr. Hays for many years he eat in your place, and how is it you go see Mr. Hays for me?" I say, "I do it; I will all right. I like him." I come and see Mr. Hays, and I tell him my sister sent me for to see if they can compel administrator to produce the will, and Mr. Hays, he say, "You bring your sister-in-law sometime her here—fetch her here," and I bring my sister-in-law and my sister talk with Mr. Hays, and so after they talk, Mr. Hays say, "You get that papers, he say, you bring me that papers, and you come and go home—you got the papers with you?"

She say, "No." "Well," he say, "go home and bring me the papers, and I will see what I can do for you, and she bring the papers and come and see Mr. Hays again. And after they got the papers, Mr. Hays says, "Miss Carrau, this will is just as good as if written with fire letters," and from that day I leave the business with my sister.

643 Q. Did you, Mr. Daussat, at the time you met me in the morning, the forenoon, at my office, make an appointment to meet me in the afternoon with your sister?

A. Yes, sir.

Q. Was it in the morning or the afternoon——

A. That was in the morning.

Q. That your sister and yourself stated to me what Mr. Sullivan said to you?

A. That was the afternoon?

Q. That was in the afternoon?

A. Yes, sir.

Q. Then, as a matter of fact, you did not state anything to me——

A. No, sir.

Q. In the morning?

A. No, sir.

Q. Concerning what you wanted?

Mr. HOWE: Objected to as leading.

A. No, sir.

Q. You simply made an appointment for you to bring your sister to see me concerning Mr. Sullivan's matter—estate, in the afternoon.

Mr. HOWE: Objected to as leading.

A. Yes.

Q. Now, Mr. Daussat, when next did you call, if you did call to see me, and with whom? Did you afterwards call with anybody else at my office?

A. I do not understand.

Q. Did your wife and your other sister-in-law and yourself and Marie come to my office again in a day or two?

A. Yes, sir; two days after.

Q. Two days afterwards?

A. Yes, sir.

644 Q. And did you and your sisters all then repeat to me the event of the night before Mr. Sullivan's death?

Mr. HOWE: Objected to as leading.

A. Yes, sir.

Q. Can you remember the day of the month, or the month that that was?

A. I cannot recollect, Mr. Hays.

Q. You do not remember?

A. That was probably in the last days of December or January.

Q. December or January?
A. Something like that.
Q. What year?
A. 1890, or in 1891, in January.
Q. 1900, or 1901?
A. In January.
Q. At the time you signed the petition for Mr. McCutcheon for your appointment as administrator, you say you did not read the petition, and did not know what it contained?

Mr. Howe: Objected to as leading.

A. No, sir.
Q. This seems to have been sworn to; where were you when you signed—is this your signature? (Paper writing shown witness.)
A. Yes.
Q. Where were you when you signed that, when you put your name to that, where were you?
A. I don't know for sure whether I am in the office or in my place of business. The first paper I signed in that office, the second I signed in my place of business.
645 Q. That was the time he brought the other man with him, was it?
A. Yes, sir; that was the time he brought the other man to my place of business.
Q. Was that after you had been in the office?
A. I no sure, but I think it was the next day.
Q. Now, to refresh your recollection, is it not a fact that this is the paper you signed the next day?

Mr. Howe: Objected to as leading.

A. That is what I say, I can't remember what kind of paper it was, because I no read him—I no read the paper;
Q. You did not read the paper then, that you signed that day?

Mr. Howe: Objected to as leading.

A. No, sir.
Q. And that was the day when you signed the next paper that Mr. McCutcheon assured you, you were making no mistake?

Mr Howe: Objected to as leading.

Q. If you signed any paper?
A. Yes, sir.
Q. At the time of Mr. Sullivan's death, was there any balance due you under his agreement for lodging and tuition?
A. I think so, that they got something.
Q. Some?
A. Some. My wife, I think, say they got something.
Q. Got some balance of indebtedness?
A. Yes, sir.

646 Q. Did you ever make any claim for that?
A. No, sir.
Q. File any claim against the estate?
A. No, sir.
Q. Have you any arrangement with the defendant, Marie Carrau, whereby, in the event she shall recover this estate, that you shall have any portion of it?
A. No, sir.
Q. Have you any interest in her recovering this estate further than your relationship to her as her brother-in-law?
A. No, except she want to give me something.
Q. Not unless she wants to give you something?
A. Yes, sir.
Q. But you have no arrangements with her on that subject?
A. No, sir.
Q. She has made her home with you, has she not, for a number of years?
A. Yes, sir.
Q. Ever since your marriage?
A. Before—the father lived with me before.
Q. Her father lived with you?
A. Yes.
Q. Before your marriage?
A. Yes.
Q. And then since your marriage?
A. We make our residence together.
Q. (Paper writing handed witness.) Just look at that paper, Mr. Daussat, and tell us what it is.
A. All this.
Q. Yes, what is that?
A. That is the paper I signed with my sisters and my wife
647 after the dying of Mr. Sullivan. The paper was presented to me by my sister.
Q. After the death of Mr. Sullivan?
A. Yes, sir.
Q. What is that a copy of—what is that an exact or substantial copy of?

Mr. Howe: Objected to as leading.

A. Of the words—that is, the words, correct words what he say, Mr. Sullivan, before he die, the night before.
Q. The night before he died?
A. Yes, sir.
A. What did you understand that to be at the time you signed it?
A. I understand that is the real will, Mr. Sullivan gives everything he got to her, to my sister, Marie. In other words, it was the real will.

(Signed) LOUIS DAUSSAT,
[SEAL.] —— ——,
U. S. Master in Chancery.

Cross-examination.

(Mr. HOWE:)

Q. How do you pronounce your name?
A. Louis Daussat.
Q. How old are you?
A. I am born in '48.
Q. And how long have you been living in the State of Washington?
A. I have lived in the State of Washington from '89.
Q. How long have you been living in the city of Seattle?
A. In Seattle? I came directly to Seattle.
Q. The same length of time?
A. Yes, sir.
648 Q. How long have you lived in the United States?
A. I came here to the United States in '73.
Q. Did you come to the United States directly from France?
A. Yes sir.
Q. What has been your business ever since you have lived in the United States?
A. My business in this State is delicatessen and pork-packer since I come to this State.
Q. When you first came to the United States, where did you locate?
A. In 'Frisco, California.
Q. How long did you live in 'Frisco?
A. I lived in 'Frisco until I came here in '89.
Q. Then you arrived in 'Frisco in '73?
A. Yes, sir.
Q. And lived there until '89?
A. Yes, sir.
Q. And then you moved to Seattle?
A. To Seattle.
Q. After arriving at Seattle what was your business?
A. Seattle?
Q. Yes.
A. I worked in different places here. The first place I worked for Samuel Cohn & Co.
Q. Can you spell it?
A. I can't. It is the Royal restaurant now.
Q. Well, it is the Royal restaurant?
A. Yes.
Q. What was the name of that restaurant then?
A. It was Cohn's restaurant; that was in '90.
Q. Then how long did you work there?
649 A. I worked there—oh, probably a year or fifteen months, I can't recollect for sure.
Q. Where did you next work?

A. I worked next to the Rosamond restaurant, next to the Fulton market.
Q. How long did you work there?
A. I worked there—I worked there longer.
Q. Well, about how long?
A. I worked until they closed up the place, about probably one year, or something like that.
Q. Where did you next work?
A. I next worked—after the Rosamond I worked at the Royal restaurant.
Q. How long did you work there?
A. I worked there a short time.
Q. Well, how long?
A. Well, I can't recollect for sure.
Q. About?
A. Probably five or six months.
Q. Where did you next work?
A. The next I worked for myself?
Q. Where?
A. I started the Citizens' Market and Delicatessen—the Citizens' market between University and Seneca—we got a big building called the Citizens' market.
Q. Then where did you work?
A. After?
Q. Next work, yes.
A. After that the market ran out, they got to move, everybody has quit the business, I go to work again for the Royal.
650 Q. And where did you next work?
A. I next worked for Mr. Romano in the Arlington restaurant.
Q. How long did you work there?
A. I worked there—I can't recollect those.
Q. About?
A. I worked so many places I can't recollect.
Q. About?
A. I can't r-collect for sure, I worked so many places.
Q. I did not say sure, I said about?
A. No, I can't recollect. I work a year probably, I work two times there, you see, in this kind of business——
Q. Don't talk so fast. Now, where was the Arlington restaurant?
A. The Arlington restaurant was South Yesler and Second street, in the middle of the block. They have got a wine merchant in that place to-day.
Q. But you worked in the restaurant, did you?
A. Yes, sir.
Q. That was on South Second street?
A. Yes, sir.
Q. Below Yesler avenue?
A. Yes, sir.

Q. Is that the same place that was run by Alladoo at one time?
A. Yes, sir.
Q. Did you run the restaurant part of it?
A. No, sir.
Q. What part of it did you run?
A. I run restaurant after.
651 Q. No, when you were working for Romano, what part of the work did you do?
A. In the kitchen.
Q. Where did you next work—wait one minute; when was it you worked there, what year?
A. Well, I can't recollect that.
Q. About what year?
A. I can't, I can't do it, I can't recollect distinct, because I work so many places.
Q. Don't talk so fast now.
A. No, but I can't recollect this now.
Q. Was it in 1890?
A. Oh, no.
Q. Was it in 1895?
A. Well I worked in that time too, probably, in '95 and '96 I worked there.
Q. 1895 and 1896?
A. Something that.
Q. Where did you next work?
A. Well, after I start for myself.
Q. And where did you open?
A. On Cherry street.
Q. Where?
A. Cherry street between Second and First or First and Second, middle of the block.
Q. What was the name of the restaurant?
A. Paris restaurant.
Q. Which side of Cherry street was it, the north or south side?
A. The south side.
Q. Was it between the alley and Front street?
652 A. In the corner of the alley and in the middle of the block.
Q. And how long did you stay there, how long did you keep open that place?
A. Well, I kept open that place pretty near two years.
Q. And then where did you go?
A. Then I go work again for the Royal.
Q. And when you left the Royal, where did you then go?
A. I go work for Mr. Belles—Harry Belles.
Q. And how long did you work for him?
A. I worked a very short time for him.
Q. About how long?
A. Oh, I don't know, I worked in the old place, and after they

closed it, the old place and opened the new place on Second street, where the Fountain restaurant is now, and he sold out that place, and I work a week more, and after I go and start myself with a man named Rex in the Occidental café.

Q. Then you opened the Occidental café and you have been working there ever since, have you?

A. Yes, sir.

Q. Now, when was it that you opened the Occidental café?

A. Well, that is last January is two years.

Q. Last January two years ago?

A. Yes, sir.

Q. Now, since you have been in the United States you have had a great deal to do with Americans, have you not?

A. Well, some.

653 Q. Well, I mean you have been talking with Americans frequently, have you not?

A. Yes, sir.

Q. You see more of Americans than you do of French people, do you not?

A. Certainly.

Q. And you have to talk with them in English, do you not?

A. Yes, sir.

Q. Now, you can read and write easily, can't you?

A. Well, no- very easily. I can't write in reading—I can't write with a pen much.

Q. You can't write much?

A. I can, but I am sure of making some mistake.

Q. You can read easily, can you not?

A. Yes, sir, I think so.

Q. You can read easily, can you not?

A. Well, I think so.

Q. You understand English perfectly, do you not?

A. No, I understand for my business, you know, but I can't keep good conversation.

Q. No, but you can understand what is said to you, can't you?

A. Oh, yes; oh, yes.

Q. No trouble about that?

A. No, sir.

Q. Now, when were you married?

A. I married here in Seattle, it was in '91.

Q. '91?

A. '91 or '92.

Q. Well, which?

A. Why, I can't remember, sure.

Q. You mean to say you can't remember the day you were married?

A. No, sir.

Q. You can't?

A. No, sir.

654 Q. How many times have you been married?
A. Two times.
Q. When were you married to your present wife, what day?
A. I don't know.
Q. What year?
A. I have been married in California——
Q. What year?
A. I can tell you about that, that was in '73 or '74.
Q. Oh, no, I say to your present wife?
A. I been married two times.
Q. What year did you marry Augustine Daussat?
A. I say it was in the latter part of '91 or '92—beginning of '92.
Q. You do not know whether it was 1891 or 1892?
A. No, sir.
Q. What month was it?
A. I do not know.
Q. What day of the week was it?
A. I can't recollect that.
Q. Who performed the ceremony, what priest married you?
A. The judge married me.
Q. What judge married you?
A. He has died now, he died pretty near after.
Q. Who was he?
A. I can't remember the name right away now, and I can't tell you what kind of man, what looking man.
Q. Where was the marriage performed, in Seattle?
A. Yes, sir.
Q. At what court?
655 A. On the corner of James and Second, where now the Barberis restaurant is. That gentleman is dead.
Q. Now, you cannot remember the day of the week?
A. No, sir.
Q. You cannot remember the month?
A. No, sir.
Q. You cannot remember the year?
A. No, sir, it is too long a time.
Q. When the judge performed the marriage ceremony, what did you say to your wife, when you took her to be your wife, what words did you use?
A. What words what I used?
Q. Yes.
A. Well, I used the words what a gentleman uses when he marry a lady. I take her for wife and support her.
Q. You remember that?
A. Yes, sir, any man would remember that.
Q. Now, do you remember the year that you were married to your first wife?
A. That was in '73 or '74.

Q. You do not know which?
A. No.
Q. Do you know the day of the month?
A. No, sir.
Q. Do you konw the day of the week?
A. No, sir.
Q. Before you married your present wife, you conveyed to her some property, did you not?
656 A. Yes, sir.
Q. You were in debt at that time, were you not?
A. Yes, sir.
Q. Your creditors brought suit to set aside that conveyance, did they not?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial and not cross-examination.

A. Yes, sir.
Q. The court did not set aside the conveyance, did it?
A. What do you say?
Q. The court did not set aside the conveyance, did it?
A. Set aside the conveyance?
Q. The court did not set aside your deed, did it?
A. Yes, the court set it aside; I win.
Q. The court decided in favor of your wife?
A. Yes, sir.
Q. The court decided, however, that as far as you were concerned you made the conveyance to defraud your creditors, did it not?
A. No, sir.

Mr. HAYS: I object to the question and move to strike out the answer as being incompetent, irrelevant and immaterial.

Q. That creditor was named what—what was the name of the creditor?
A. What?
The MASTER IN CHANCERY: The name of the man who brought the suit.
A. Name, Prignon.
657 Q. Do you not remember that the court decided that you intended to defraud your creditor, but that your wife did not know it?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial and not cross-examination.

A. No, sir.
Q. You do not remember that?
A. No, sir, I never intended to defraud anybody.
Q. Oh, no, I am asking you what you remember the court found.
A. No, sir.

Q. Do you not remember that the court said——
A. No, sir.
Q. That you intended to defraud your creditor, but that your wife did not know it, do you not remember that?

Mr. HAYS: He has answered the question some three times that he did not remember any such thing.

A. No, sir.
Q. Do you not remember it?
A. No, sir.
Q. What the agreement between your wife and yourself was?

Mr. HAYS: I object to the counsel reading from the Washington Report of the purported decision of a purported case, having no connection, relevancy, or reference whatsoever to the case at bar, for the reason that it is unnecessarily encumbering the record and done for the purpose of unjustly reflecting against the veracity, standing and character of this witness.

658 Q. The agreement between your wife and yourself was that if she would agree to marry you, you would convey her this property, was it not?
A. Yes, sir.
Q. You remember the case of Prignon against Daussat, do you not?
A. Yes, sir.
Q. Who represented you in that case?
A. Mr. Brady.
Q. Now, Mr. Daussat——

Mr. HAYS: Consider my objection as being made to all of these questions on that line, please, Mr. Howe.
Mr. HOWE: Certainly.
Mr. HAYS: And I will not interrupt your examination further.

Q. You testified in that case, did you not?
A. Probably.
Q. Well, did you, or did you not?
A. Yes, sir, probably.
Q. Mrs. Daussat testified in that case, did she not?
A. Yes, sir.
Q. The contract of marriage between you and Mrs. Daussat was in writing, was it not?
A. Yes, sir.
Q. How long was it after making that contract before you married Mrs. Daussat? I mean how long was it between making the contract and the date of your marriage?
A. A long time before.
Q. You married her a long time after making the contract, is that right?
A. After?

659 Q. Yes.
A. Yes, sir.
Q. Now, how many papers did you sign for Mr. McCutcheon?
A. Two.
Q. Two or three?
A. Two.
Q. He tried to get you to sign a third paper?
A. Yes, sir.
Q. And you took that third paper home and read it?
A. Yes, sir.
Q. And then declined to sign it?
A. Yes, sir.
Q. What was in that third paper?
A. I can't recollect, sir.
Q. What was it about?
A. About the administrator.
Q. And when was it?
A. Well, a little while after they sign the second paper.
Q. And can you not remember something that was in it?
A. No, sir.
Q. Not a word?
A. No, sir.
Q. Did you read it to your sisters and to your wife?
A. Well, I leave it there and everybody read it.
Q. But you cannot remember one word that was in it?
A. No, sir.
Q. Was it a petition?
A. Because I went after the other papers, I wanted them too—it was a petition, probably.
Q. Was it a petition?
A. Probably it was, something he wanted me to sign.
Q. Just answer the question, was it a petition or not?
660 A. I do not recollect.
Q. What was the paper that she signed?
A. I never read that, sir
Q. You do not know what was in it?
A. No, sir.
Q. Mr. McCutcheon read it to you?
A. No, sir, I no got time.
Q. What?
A. I no got time, I tell him I no got time at all.
Q. The first paper, this paper that you have—this first petition, dated October the 5th, 1900, it is a very short paper, is it not?
A. Yes.
Q. Just a little over a half page, is it not?
A. Yes.
Q. Did you read that?
A. No, sir.
Q. Where did Mr. McCutcheon get the information on which he

drew up this petition, who gave him the information that you were a creditor of Sullivan?

A. Nobody.

Q. Nobody?

A. No.

Q. What does the word "intestate" mean?

A. What does the word mean?

Q. Yes, what does the word "intestate" mean?

A. What is the word "intestate"?

Q. Yes.

A. The word "intestate"?

Q. What does the word "intestate" mean? Does it mean without a will?

A. "Intestate"?

Q. Yes.

661 A. "Intestate" is without a will, I know that; that is right. I did not catch you what you said, you know, the first time.

Q. But when you get the word right you knew what the meaning of it is?

A. Yes.

Q. And you always have known the meaning of it, have you not?

A. What?

Q. I say you have always known the meaning of that word?

A. Yes.

Q. Now, in what day was it that you were in Mr. McCutcheon's office?

A. Well, that was in the week after Sullivan dead.

Q. The week after Sullivan died?

A. After; yes, sir.

Q. At that time you had put your name to this paper, to this writing on pink paper, which is attached to the petition for the probate of the will in the estate of John Sullivan?

A. What paper?

Q. The paper which I now show you?

A. Yes. What did you say?

Q. At the time you were in McCutcheon's office?

A. Yes.

Q. —It was after you had signed the writing on this pink paper?

A. Oh, yes, sir.

Q. Which I now show you and which is the purported nuncupative will attached to the petition of Marie Carrau?

A. Yes, sir.

Q. You have signed that paper?

A. Yes, I signed it.

662 Q. Did you tell Mr. McCutcheon anything about this paper?

A. No, sir.

Q. At that time you thought that this was the genuine will of John Sullivan?

A. No, sir.

Q. You did not?
A. No, sir.
Q. When you put your name to this paper, did you think you were putting your name to the will of Sullivan?
A. Yes, sir, I think that this will was the real will, that he made it.
Q. You think this was the real will?
A. Yes, sir.
Q. And when you put your name there to it, you thought you were putting your name to what was the real will of John Sullivan?
A. Yes, sir.
Q. In order that that might be probated?
A. Yes, sir.
Q. And after that you went to Mr. McCutcheon's office?
A. Yes, sir.
Q. And then you never told Mr. McCutcheon anything about this paper?
A. No, sir.
Q. You never told him what Sullivan said?
A. No, sir.
Q. Is this the only paper containing the words of John Sullivan that your sister wrote out?
A. This is the last paper we signed after she make the original, but she writes it before.
Q. Who did?
A. My sister, on soft paper.
663 Q. When did she do that?
A. She done it after Mr. Sullivan speaks the words.
Q. When did she write that original?
A. Right at the day after.
Q. The day after?
A. After he died—the same day he died—no, sir, that is the same day he died.

Mr. HAYS: I do not think he understood the question.
Mr. HOWE: I want to have it appear that at this time Mr. Hays said, "I do not think the witness understands."

A. I understand well right off.

(Mr. HAYS:)

Q. Then answer the question as given you without answering anything else.
WITNESS: I know, I understand it well, though.
Mr. HAYS: Then there will be no occasion to remind you as to what the question is.

Mr. HOWE: I object to these instructions given to the witness by Mr. Hays during the cross-examination.

Q. When did Miss Carrau write the paper that you say is the original?

A. The original?
Q. Yes.
A. The night after Mr. Sullivan he said his words.
Q. What time?
A. Well, I go back in the room, I leave her there, and she came probably in the parlor and write it.
Q. What time at night?
664 A. Oh, that is twelve o'clock pretty near.
Q. Very near twelve o'clock?
A. After eleven.
Q. How much?
A. After eleven.
Q. You thought John Sullivan was making a will, did you not?
A. Yes, sir.
Q. It was a very solemn event, was it not?
A. Solemn event?
Q. It was a very solemn sacred event, was it not?
A. I can't understand you, Mr. Howe.
Q. You thought it was a solemn thing he was doing, did you not?
A. Yes, sir.
Q. You thought the man was breathing hard, did you not?
A. Well——
Q. Did you not?
A. Well, there was not much change in him anyhow.
Q. He was breathing hard, was he not?
A. Breathing hard, yes.
Q. You thought he called you people to witness his will, did you not?
A. No, the time he called me I no believe it was for that.
Q. When you went in and heard what he said you thought you were witnessing his will, did you not?
A. Yes, sir, the time that he talked.
Q. And it made an impression on your mind?
A. Yes, sir.
Q. But you do not know what time of night that was?
A. Yes, sir.
665 Q. What time of night was it?
A. That was the 25th of September.
Q. 25th of September?
A. Yes, sir.
Q. At what time of night?
A. Well, about eleven o'clock.
Q. And when did she put that in writing?
A. Well, she put that in writing after that?
Q. What time after that?
A. Well, probably fifteen minutes or half hour.
Q. Which was it?
A. Which was it?
Q. Fifty minutes or half an hour?

A. Well, some fifteen minutes or half hour.
Q. You said fifteen minutes?
A. Fifteen minutes or half hour.
Q. Which was it as close as you can tell?
A. Very near a little after I left the room.
Q. Mention the hour and minute?
A. I can't mention the minute Mr. Howe.
Q. Mention within fifteen minutes?
A. Well, fifteen minutes or half an hour.
Q. Then you left the room?
A. Yes, fifteen minutes, probably.
Q. Where did she write it out?
A. She wrote it in the parlor.
Q. In the parlor?
A. Yes.
Q. What part of the parlor?
A. Well, in the dining-room parlor.
Q. What part of the room?
A. Well, the room is in the middle of the house.
666 Q. What part of the room?
A. Well, we got a little secretary near the dining-room table, and on the secretary she write it, on soft paper.
Q. You know it was soft paper?
A. Yes, sir, she took a pencil.
Q. She took a pencil and it was soft paper?
A. I saw the paper; I know it was soft paper.
Q. Did you see what she wrote?
A. No, not that night.
Q. How long after you left the room did she leave the room?
A. I do not know.
Q. How long did it take her to write that original?
A. It did not take her long.
Q. How long?
A. Well, I don't know sure.
Q. About how long?
A. I am not sure.
Q. About how long?
A. Probably ten or fifteen minutes.
Q. Ten or fifteen minutes?
A. Probably more, I don't know sure.
Q. Did you stay in the room where she was writing from the time she came in tl at room until the time she went back to Mr. Sullivan's room?
A. No, sir.
Q. Where did you go?
A. I went to my room.
Q. Go to bed?
A. Me and my wife—we went in the room; I don't know we go to bed right away.

667 Q. When you and your wife and your sisters heard these words that Mr. Sullivan said, did you not go downstairs and talk the matter as a great event?

A. Well, we talked—my sister Hermance and my wife and me, we talked some about that.

Q. Did you not think it was a great thing for your sister?

A. A good thing.

Q. Yes.

A. Well, I did not know before——

Q. No, did you not talk it over that—with them as being a great thing, that she was made a very wealthy woman?

A. Certainly.

Q. What?

A. Certainly.

Q. Now, what were you doing just before you went up into John Sullivan's room on the 25th of September?

A. What I doing?

Q. Yes.

A. Well, I am in the parlor.

Q. What were you doing?

A. Sitting down and at same time looking at papers—newspapers.

Q. What papers?

A. The evening papers or the day papers.

Q. You were reading the newspapers?

A. Yes, sir.

Q. And your sister Marie called you?

A. Yes, sir.

Q. Did she come into the room and call you?

A. No, they called me from upstairs.

Q. Did all three of you go together?

668 A. Yes, sir.

Q. Did you go quickly?

A. Yes, sir, as quick as we could go up.

Q. And which one went into the room first?

A. Well, Marie was in advance first.

Q. Which one next?

A. Well, my wife was next—I don't know when, but I came last.

Q. You came the last?

A. Yes.

Q. Who spoke to Mr. Sullivan?

A. I spoke to him myself.

Q. What did you say?

A. "What is the matter with him?"

Q. What did he say?

A. He say nothing except he wanted to see me, wanted to see all the family.

Q. He said he wanted to see all the family?

A. Yes, sir.

Q. Then what did he say?

A. Well, that is what he said, those words.
Q. Then what did he say?
A. Oh, he said, "I want you to remember and witness that I will all my properties and personal effects, worth many thousands of dollars, to be the property and money of your sister Marie. I am sick and I do not know what might happen."
Q. What did you then do?
A. I told him "Thank you, sir."
Q. And what did you then do?
A. I did not say anything more.
669 Q. Then did you all walk out of the room?
A. Yes, sir.
Q. Did you not ask him what he meant by that?
A. No, sir.
Q. Did he tell you what he meant by it?
A. No, sir.
Q. At that time, Mr. Daussat, did you not think that John Sullivan had made a written will, and that he was telling you what was in it?
A. No, sir.
Q. That is not so?
A. I think I believe that is the real will, because he promised [illegible] marry Marie, my sister.
Q. My question is, did you not think he had made a written will, and what he was telling you was what was in the written will?
A. At that time?
Q. Yes.
A. No, I think that is the real will.
Q. You thought what he was saying was the real will?
A. Yes, sir.
Q. You did not think there was another will?
A. No, sir, because I supposed the man was so sick.
Q. You did not think there was another will?
A. No, sir.
Q. And the reason you thought that that was his will was because he was so sick; is that correct?
A. Well, I know he supposed he was very serious- sick.
Q. You supposed he was very sick?
A. No.
Q. You did not think he was sick?
A. Oh, I supposed he was sick, but——
670 Q. You did not think he was about to die?
A. No.
Q. You did not think he was in any danger of death?
A. Yes, you can't say sometimes.
Q. Did you at that time think that John Sullivan, when he spoke those words, was in danger of death?
A. Well, I think he got something on his mind that made him think——

Q. Answer my question. At that time did you think that John Sullivan was in danger of death?

A. No, sir.

Q. Did John Sullivan say that he thought he was in danger of death?

A. No, sir.

Q. There was a telephone in your house, was there not?

A. Yes, sir.

Q. There was a doctor next door to you, was there not?

A. Yes, sir.

Q. You did not call that doctor in, did you?

A. No, sir.

Q. You did not call over to that house, did you?

A. No, sir.

Q. You did not call for any doctor, did you?

A. No, sir.

Q. You did not call for any priest, did you?

A. No, sir.

Q. You are a Roman Catholic, are you not?

A. Yes, sir.

Q. What church do you go to?

A. I go in the——

671 Q. Church of the Immaculate?

A. The Immaculate, that is my church.

Q. When you got downstairs who first spoke about what Sullivan had said?

A. Dead?

Q. What he had said?

A. What he said?

Q. Yes.

A. Well, we talked together. I did and my wife and my sisters, and say what Sullivan had said.

Q. What did you say?

A. I said I was very surprised that he was—I said we talked that and we concluded that is what he say, and we thought probably Mr. Sullivan is more sick and so he make a will for my sister, for Marie.

Q. Now, what did you say when you got downstairs in that room?

A. Yes, sir.

Q. What did you say?

Mr. HAYS: He has just answered what they said.

Q. Just tell me what you said?

A. I have answered that.

Mr. HAYS: I object to any repetition of it.

Q. Just say it again.

A. I say I think probably Mr. Sullivan there find he more sick or

something, and he believe he give the whole thing, all the properties, to my sister Marie. That is the will he meant by it.

Q. What did anybody else say?

A. Well, everybody said probably he think too—as much
672 as to say he think it be all right, and he did not want to say those words exactly unless they were right.

Q. And have you repeated the words that each person said?

A. What persons?

Q. Have you repeated the words that each person said downstairs after the three of you got downstairs?

A. Well, we repeated something.

Q. Now, how often have you read either the original or the copy that your sister wrote down?

A. I read the——

Q. How long have you read them, how many times?

A. Many times.

Q. How many times?

A. I do not know how many times. I want to be sure I remember the words he say, and we conclude together that was the words.

Q. When was the last time that you read the words?

A. That is between ten and twelve.

Q. What?

A. Between ten and twelve.

Q. Between ten and twelve?

A. Yes.

Q. What day?

A. The day of Mr. Sullivan's death.

Q. Have you read them since, the words?

A. The words?

Q. Yes.

A. Sometimes I read them myself to myself.

Q. I say have you read them?

A. No, sir.

Q. When was the last time that you ever read them?

673 A. The last time these words?

Q. Yes.

A. I don't know; I can't recollect.

Q. About when?

A. I can't recollect, Mr. Howe.

Q. About when?

A. About before I got—before I read them again, before we go see the lawyers.

Q. What lawyers?

A. Many lawyers, you and Mr. Littell and Mr. Judge Burke.

Q. Do I understand you, the last time that you read those papers was before you went to see Mr. Littell?

A. Yes.

Q. How many times have you said the words over to any person that Mr. Sullivan spoke?

A. How many times?
Q. Yes.
A. I say the same words.
Q. How many times have you ever repeated the words that Mr. Sullivan spoke, to anyone?
A. Well, I say them again the time I can't find any lawyers that can't help my sister to have them find the——
Q. How many times?
A. Oh, I can't remember that; I can't recollect that, Mr. Howe. I got other things in my head.
Q. How many times has anybody ever said those words over to you?
A. How many times?
Q. Yes.
A. Nobody any time.
Q. Nobody has ever said them to you?
674 A. No, sir.
Q. Now, when was the last time before to-day that you ever repeated those words to anyone?
A. The last time?
Q. When is the last occasion on which you have repeated those words to anybody before to-day?
A. Well, the time that we came—when my family saw Mr. Hays altogether.
Q. That was the last time before to-day?
A. Yes, sir.
Q. That you have ever repeated those words?
A. Yes, sir, and the probate court; that is the last time in the probate court, Tallman's court.
Q. The last time that you ever repeated those words to anyone was the day you repeated them in court last March?
A. Yes, sir.
Q. Was it not?
A. Yes, sir.
Q. And you had never read over those words since going to see Mr. Littell?
A. Read the words?
Q. You had never read those papers with the words on them after going to see Mr. Littell?
A. Read them, see them, look at them?
Q. Read them.
A. Look at them?
Q. Yes.
A. Well, I look at them before I see Littel—yes, after Littell.
Q. When was the last time?
A. Well, the last time that was in the superior court.
675 Q. In the superior court?
A. Yes.

Q. So the last time you ever read those words or said those words was the day you were up, in the——

A. Or look at them, read them, see them?

Q. Yes.

A. That was the time me and all my family and all my family and sister Marie saw Mr. Hays, that was the last time I read that paper.

Q. That was the last time you read those words on that paper?

A. Yes, sir.

Q. And the last time you repeated those words was up in the court last March?

A. Yes, sir.

Q. The last time you heard those words repeated before to-day was up in court last March?

A. Yes, sir.

Q. Now, where is that original that you saw your sister write?

A. I do not know.

Q. What did your sister do with it?

A. I don't know. She bring it probably to Mr. Hays with this paper, I do not know.

Q. Did Mr. Hays read out of a book when you went to see him?

A. Me? No.

Q. To any of you, did he explain the law to you?

A. He explained the law altogether.

Q. He explained the law altogether?

A. Yes, sir.

Q. What kind of will did he tell you that was?

A. He said that was a real and genuine will.

Q. Did he say that this pink paper was a real and genuine will?

676 A. No. He said the words, the contents of the paper, the words, was the real and genuine will.

Q. And at that time did your sister have the original and this pink paper with her?

A. I can't recollect, Mr. Howe.

Q. Well, did she or did she not?

Mr. HAYS: He says he can't recollect.

A. I can't recollect; I remember she got that.

Q. Did she have the original will with her?

A. I can't remember.

Q. You know she had the pink paper?

A. I don't remember.

Q. You can remember whether she had the pink paper?

A. No, sir.

Q. You can't remember whether she had the original?

A. I can remember she had this.

Q. You can remember that she had this pink paper?

A. That paper, yes.

Q. She had that the first time that you and she went to see Mr. Hays?
A. The first time? No, sir.
Q. The second time?
A. The second time.
Q. But you cannot remember whether she had the original paper at that time?
A. Yes.
Q. She did have it?
A. Yes, sir.
Q. What did she do with it?
A. Well, she gave it all, all to Mr. Hays.
Q. She gave both of them to Mr. Hays?
A. Yes, sir.
677 Q. Now, what date was that?
A. What day?
Q. What month was that?
A. It was the last days of December or January.
Q. Of what year?
A. Well, of 1890 or 1891.
Q. You mean 1900 or 1901?
A. Yes, you can't understand that because I cannot talk good.
Q. That is all right; now, when was it that you went to see Mr. Littell?
A. A little while after Mr. O'Brien was nominated administrator.
Q. And when was it you came to see me?
A. Well, after him.
Q. And when was it that you went to see Judge Burke?
A. Well, a little while, a little time after.
Q. How long after?
A. I can't tell you.
Q. About how long after?
A. I can't recollect, sir.
Q. What month was it?
A. Probably in December.
Q. Probably in December?
A. Yes.
Q. 1900?
A. I think so.
Q. Did you tell Judge Burke that your sister had written out this statement on pink paper which is probated as the will in probate?
A. In probate? No, sir.
Q. Did you tell Judge Burke that your sister had written out the words on this pink paper?
678 A. No, sir.
Q. Did you tell him that she had written out the original of what Mr. Sullivan said?
A. No, sir.
Q. Did you mention that Mr. Sullivan said any such words——

A. Yes, sir.
Q. —To Judge Burke?
A. Yes, sir.
Q. At that time?
A. Yes, sir.
Q. And what words did you tell Judge Burke, Mr. Sullivan had said?
A. I told him that I——
Q. What words did you repeat that Sullivan had said?
A. I said, "I want you to remember and witness that I will—all my properties and personal effects worth many thousands of dollars, to be the property and the money of your sister Marie. I am sick, and I don't know what might happen." That is the words I say to——
Q. You say those exact words to Judge Burke?
A. Yes, sir.
Q. At that time?
A. Yes, sir.
Q. And you did not say that those words had been written down?
A. No, sir.
Q. Had they been written down at that time?
A. Yes, sir.
Q. How many times?
A. What?
Q. Those words?
A. Written.
Q. How many times had those words been written down at the time you saw Judge Burke?
A. I do not know.
679 Q. You do not know?
A. I do not understand well what you say.
Q. I say when you saw Judge Burke and you told him that Mr. Sullivan said those words, how many times had those words been written down?
A. How many times before?
Q. How many times had they been put in writing?
A. Well, I didn't tell him.
Q. I say how many times had they been put in writing, not what you told Judge Burke, but how many times had they been put in writing?
A. Not put in writing at all.
Q. They had not been put in writing at all?
A. These words?
Q. Yes.
A. I no tell him.
Q. I asked you how many times had those words been written down by anybody?
A. Let me see what you say; how many times those words to be written?

Q. Had they been written?
A. Written?
Q. Yes.
A. Written, looking or reading the paper?
Q. How many times?
A. No, see if I understand; written with a pen or looking, reading?
Q. Written.
A. Reading is writing, the same as newspaper.
Q. No, how many times before you told Judge Burke what Mr. Sullivan had said, had those words been put on paper?
A. I don't understand that.
680 Q. You do not understand that question?
A. I said those words——
Q. You do not understand my question?
A. No, sir.
Q. How many times——
A. Yes, how many times——
Q. —had the words which you said John Sullivan spoke been put on paper by anybody's writing them down?
A. I can't remember—never put on paper at all.
Q. Had anybody put them on paper at that time?
A. Well, my sister, after the day of the death of Mr. Sullivan put them on.
Q. How many times did she put them on paper before you told Judge Burke what Sullivan said?
A. Well, two times.
Q. Has anybody else put them on paper?
A. No, sir, no, sir. Is that what you were asking me?
Q. You never put them on paper yourself?
A. No, sir.

(Signed) LOUIS DAUSSAT.

(At this point a recess was taken until two o'clock the same day.)

[SEAL.] ——, *U. S. Master in Chancery.*

SEATTLE, WASH., TWO P. M.,
SATURDAY, *March* 8, 1902.

Present: The same as at the morning session.

681 LOUIS DASSETT, a witness for and on behalf of defendant, on the stand:

Cross-examination (resumed).

(Mr. HOWE:)

Q. Now, Mr. Daussat, when you and your sister in law and your wife went into Mr. Sullivan's room, was he in his last sickness?
A. Yes, sir.

Q. Did you know at that time that that was his last sickness?
A. No, sir.
Q. Why did you not send for a doctor?
A. Because the doctor, he said he would come in the morning.
Q. Yes, but here was a man who was so sick that he was making what you understood to be his will?
A. Yes, sir.
Q. Because as you said when you went downstairs, he must have felt worse; why did you not call a doctor?
A. I did say the morning after——
Q. But it was the morning afterwards that you said that, was it not?
A. I say in the morning at seven o'clock to my wife, "I think he is worse," and my wife, she say, "the doctor is coming to-day, this morning," and I am very glad.
Q. But you did not think he was so sick, when he was saying these words, that there was any necessity for sending for a doctor?
A. No.
Q. You did not think he was in fear of death at that time?
A. Death?
Q. In fear of death, he did not think or fear at that time that he was about to die?
682 A. No, I did not believe he was going to die.
Q. And you did not think there was any necessity to send for a priest?
A. No. sir.
Q. And you never did think there was any necessity for sending for a priest?
A. He no ask before.
Q. What?
A. He no ask before.
Q. I say you did not think there was any necessity?
A. Well, in this case, unless the gentleman did ask for a priest, they are never sent for in any cases.
Q. Now, Mr. Daussat, Mr. Sullivan never gave to your knowledge an engagement ring to Miss Carrau, did he?
A. Ring, you say?
Q. Yes.
A. No.
Q. He never gave to her any present that you know of, did he?
A. No, sir—oh, he gave her to buy some things in the house for her.
Q. What was that?
A. That was a carpet.
Q. Did he not give to the family that carpet, generally?
A. Well, I don't know whether he give it to the family generally, but I believe he gave it to my sister.
Q. Did you see him give it to your sister?
A. No, my sister say Mr. Sullivan had sent the carpet.

Q. Did you see it sent to her?
A. No, it was sent to the house.
Q. That was a stair carpet, was it?
683 A. A front stair carpet; yes, sir.
Q. And his room was upstairs?
A. Yes.
Q. Mr. Sullivan was a little lame, was he not?
A. Lame?
Q. Yes.
A. Well, I think he walked with a little difficulty, but then I can't see him limp at all.
Q. Now, Mr. Daussat, what was your object in putting your name on this pink paper which purports to be the will of Mr. Sullivan?
A. My object?
Q. Yes.
A. Well, because that is the words he say and the words he say when I believe that he find himself more sick, he find himself more worse himself, and in case there comes some accident, he wants to make a will for my sister.
Q. So your object in putting your name there was to be a witness to his will?
A. Yes, sir.
Q. Why was it, Mr. Daussat, that you never told Judge Burke, Mr. Little, or me that you had witnessed what you understood to be Mr. Sullivan's will?
A. I no tell you? I did.
Q. You told me?
A. I did.
Q. When?
A. The time I saw you in your office.
Q. You told me that you signed the paper?
A. No, oh, no. I say I told you the words just the same of Mr. Sullivan.
Q. And you told me just the very same words that you have repeated here to-day?
684 A. Yes, sir, just the same.
Q. You are positive of that?
A. Yes, sir, positive.
Q. What words did you tell me when you came into my office?
A. Yes, sir.
Q. What words?
A. Just the same words.
Q. What words are they?
A. Well, "I want you to remember and witness that I will all my properties and personal effects, worth many thousands of dollars, to be the money and property of your sister Marie. I am sick, and I do not know what can happen."
Q. You repeated those exact words to me?

A. Just exactly the words, yes, sir, because I got them in my mind exactly.
Q. When you came to see me at my office?
A. Yes, sir.
Q. And that was shortly after the appointment of Mr. O'Brien?
A. Yes, sir.
Q. And at that time did you tell me that those words had ever been written out?
A. Recorded?
Q. Yes.
A. No, sir.
Q. Did you ever tell Mr. Littell that they had ever been written out?
A. No, sir.
Q. Did you ever tell Mr. McCutcheon that they had been written out?
A. No, sir.
Q. As a matter of fact, had they been written out at that time?
A. What?
Q. Those words?
A. Because my sister-in-law told me after they got advices
685 this will no good, I went to see the lawyers to see if they can compel——

Mr. HAYS: You do not understand his question.

Q. As a matter of fact had those words been written out at the time you saw Mr. Littell?
A. These words?
Q. Yes.
A. Yes.
Q. Now, what was your object in signing this paper, why did you not sign the original?
A. Well, it was on poor paper, soft paper; that is in the pencil and they can't see it.
Q. Why did you not sign the pencil writing?
A. I do not know.
Q. Well, why did you make this?
A. I no make this.
Q. I mean why did your sister make this one?
A. That was her own business; I do not know.
Q. You do not know why she did that?
A. No, sir.
Q. Do you know why she wrote out the original?
A. Yes, sir.
Q. Why?
A. Because those were the words of Mr. Sullivan and she wanted to remember everything; there was the will.
Q. And you think your sister wrote the original because she

knew that those words were Mr. Sullivan's will and she wanted to preserve those words for that reason; was that it?

686 A. She wanted to see before she sign that those words be all right; we look and read it many times, and I say, "Those are the correct words he say; I can remember."

Q. Why did she not get Mr. Sullivan to sign that original after she had written it out?

A. I do no know.

Q. He had plenty of time to do it in, did he not, before he died?

A. I do not know.

Q. He could have signed it before he died, could he not?

A. I do not know. I no home at that time.

Q. You were not home?

A. I no home at the time; I was in my business.

Q. You were down at your restaurant?

A. Yes, sir.

Q. You were not at your restaurant when she wrote out that original?

A. Oh, no, in the morning.

Q. But could he not after she wrote out the original—did not Mr. Sullivan have plenty of time to sign it before he died?

A. I do not know.

Q. Where were you when she wrote the original?

A. I am home.

Q. You saw her leave the room?

A. Yes, sir—I leave the room upstairs.

Q. No, leave the room downstairs and go back to Mr. Sullivan's room?

A. Well, they go back every night for to give the medicine or anything necessary.

Q. You saw her go back?

687 A. No, I leave her in the parlor; I go to my room.

Q. You left her in the parlor?

A. Yes, sir.

Q. But when you left her she had written out that original?

A. She was writing the original, I guess.

Q. Now, if you thought that what she wrote out was his will why did you not get Mr. Sullivan to sign it?

A. Well, because I suppose Mr. Sullivan was no worse, because in the morning I found Mr. Sullivan sleeping and breathing heavy, and then I made up my mind that Mr. Sullivan — very sick. I told my wife, "He is worse."

Q. I understand all that, but if you thought that was Mr. Sullivan's will, why did you not get Mr. Sullivan to sign it?

A. Why because I made up — mind that was the will.

Q. No, I say, if you thought that was Mr. Sullivan's will, why did you not get Mr. Sullivan to sign it?

A. I do not understand.

Q. If you thought that was Mr. Sullivan's will that she wrote out, why did you not get Mr. Sullivan to sign that before he died?

A. Why, because we don't suppose he would die the day after, in the day after—the morning after he was very sick and he was worse.

Q. Why did you not get him to sign it then?

A. Because I supposed he would no die.

Q. You supposed he would not die?

A. No, it was none of my business to make him sign.

Q. It was not any of your business?

A. No.

688 Q. Although he was to leave all the property to your sister?

A. Yes, sir.

Q. It was not any of your business to see the will was signed?

A. No, sir.

Q. And you did not care whether he signed it or not?

A. Not at the time.

Q. Now, when you went down to Mr. Littell's office—when was that?

A. After Mr. O'Brien was nominated administrator.

Q. How long?

A. A little while after.

Q. How many days?

A. I can't recollect the days.

Q. Well, about how many days?

A. Well, I can't recollect it.

Q. Was it two weeks?

A. Well, probably a week or two weeks.

Q. A week or two weeks?

A. Yes, something there.

Q. And it was after that you came to my office?

A. Yes, sir.

Q. Now, how long after?

A. I do not know; I cannot recollect that.

Q. Do you recollect about the day you came to my office?

A. No, sir.

Q. Do you recollect about the day you came to Mr. Littell's office?

A. No, sir.

Q. Do you recollect about the day you came to Judge Burke's office?

A. No, sir.

689 Q. Do you recollect about the day you came to Mr. McCutcheon's office?

A. No, sir. It was pretty near in a few days—a few days in October, but I don't recollect the day.

Q. And you do not recollect about the day that you went to Mr. Hays?

A. No, sir; I can't recollect very near the days, very near the week. It was December or January.

Q. How long have you known Mr. Hays?

A. I know Mr. Hays for many years.

Q. How many years?

A. Well, I can't tell. I know Mr. Hays from the time I worked in the Horseshoe restaurant for Captain Marriner.

Q. How long ago is that?

A. Well, five or six years.

Q. Five or six years?

A. I believe so.

Q. Now, how was it that after you had been to Mr. Littell, and after you had been to Judge Burke, you came to go to Mr. Hays?

A. Because my sisters and all said, well, they teach the young daughter of Mr. Hayes, and she well know Mrs. Hays, and they come in their mind. She is very worried; she don't know what she can do, and she ask me to go and see Mr. Hays if he can do something for her.

Q. What was it she wanted him to do?

A. She wanted him to compel the will, the written will, from the administration or some place.

690 Q. But if you had at that time in your possession, and if your sister had at that time in her possession, what you understood to be the will of Sullivan signed by each one of you as witnesses, why did you not produce that the first time you went to Mr. Hays?

A. Because the spiritual adviser told her—she told him about this of Mr. Sullivan, and she paid him to see somebody for her, and the spiritual adviser afterwards he said he saw some lawyer and the lawyer says that is no good in this state—no good will.

Q. Now, did you tell Judge Burke that you had been advised, or that your sister had been advised that this will was no good?

A. No, sir.

Q. But you never mentioned anything about it to Judge Burke?

A. No, sir.

Q. Did you tell Mr. Littell that you had been advised that this will was no good?

A. No, sir.

Q. Did you tell me that you had been advised that it was no good?

A. No, sir.

Q. Did you tell Mr. McCutcheon that you had been advised that it was no good?

A. I got nothing to do with Mr. McCutcheon at the time.

Q. Mr. McCutcheon had been your lawyer for some years, had he not?

A. Yes.

Q. But when it came to this matter of appointing an administrator Mr. McCutcheon acted for you, did he not?

A. No.

Q. He did not?

691 A. He no acted for me, he acted for himself.

Q. Now, why was it that when you thought of going to a lawyer to have the administrator produce the will that you did not go to Mr. McCutcheon?

A. Because I became so worried and mad against him because he no give me back the papers that I sign, and I find that there paper is against her and I do not want to sign, and I want him to give me back those papers and he no give them back, and I don't want anything to do with him any more.

Q. Then, as I understand you, the reason you did not go to Mr. McCutcheon was that you were angry with him because he had had you sign some other papers?

A. Some other papers, I can't say what I sign.

Q. That is your reason?

A. Yes, sir.

Q. And at the time you signed these other papers, you did not tell Mr. McCutcheon that you or your sister had in your possession this document which you now say you witnessed the day after—the day Mr. Sullivan died?

A. I want you to ask me again, please.

Q. I say at the time you first went to Mr. McCutcheon you were not mad at him, were you—I mean at the time Mr. Cutcheon came to you first, you were not mad with him?

A. Oh, no.

Q. You knew that he was applying for his appointment as administrator, did you not?

A. Him? Yes.

Q. You knew at that time that your sister had in her pos-

692 session this paper, this writing on pink paper, which you claim is John Sullivan's will on which your name is put, did you not?

A. Yes, sir.

Q. And you never told Mr. McCutcheon?

A. No.

Q. If you were not mad with him at that time——

A. No, sir.

Q. —why did you not tell him then?

A. Because this paper, my sister in law she said that was no good—the lawyer say it was no good.

Q. So you took the opinion of some lawyer who had told the priest the will was no good?

A. Yes.

Q. And when you went to your own lawyer, or when your own lawyer came to you, you never told him that you had this document and asked him if it was good, did you?

A. No, the lawyer—ask me again that, please.

Q. I say when you went to Mr. Cutcheon——

A. Yes.

Q. —you accepted the opinion of some lawyer who advised the priest?

A. Yes.

Q. —that an oral will was no good?

A. Yes.

Q. And your own lawyer—and you never asked your own lawyer what his opinion was on that subject, did you?

A. No, sir.

Q. And at that time you knew that Miss Carrau had twice put the words that Mr. Sullivan said in writing?

A. Yes.

693 Q. And that one of those papers that you had signed your name to as a witness?

A. Yes.

Q. And you believed that you were witnessing Sullivan's will when you signed it?

A. Yes.

Q. And yet you never asked your lawyer whether that was a good will or not?

A. No, because the other lawyer said that was no good.

Q. Now, you did not see the other lawyer, did you?

A. No, sir; that is, my sister tell me that.

Q. You never consulted any other lawyer, did you, before Mr. Hays about this will?

A. Yes, sir. I consulted Mr. Littell.

Q. Did you ask Mr. Littell whether this paper was a good will?

A. No, sir, because I suppose that will is no more good, that they got one written will. I make up my mind—after that we make up our minds—my sister make up her mind they had one written will.

Q. After the priest told your sister-in-law that some lawyer said that an oral will was no good, you did not consult anybody until you consulted Mr. Hays?

A. At that time we believed that he got one written will, and we expected that will would be produced until I asked you and Mr. Burke, and I wanted to compel that will, that is all.

Q. And when you found that that written will could not be found, then you people brought out this document to Mr. Hays, is not that the fact?

694 A. Yes, sir.

Q. And until that time, this document had never been seen by any person outside of your family, had it?

A. No.

Q. And nobody outside of your family——

A. No, sir.

Q. —ever knew of the existence of either of those papers, did they?

A. Well, what is the matter with——

Q. Answer my question.

A. What?
Q. Did anybody know of the existence of this paper until it was shown to Mr. Hays?
A. No, sir.
Q. And you did not go to Mr. Hays until after you found that a written will could not be produced?
A. Until I consulted the lawyers, you and Mr. Burke——
Q. When, give me the date?
A. The last of December or the first of January.
Q. The last of December or first of January?
A. And I go to him after I saw you and Mr. Littell and Mr. Burke.
Q. Even the priest did not know that Mr. Sullivan's words had been put in writing, did he?
A. I don't know that.
Q. You never told the priest that, did you?
A. I never told him anything myself, no, sir. That was my sister.
Q. You never told the priest, I say, did you?
A. Not myself, no, sir.
695 Q. When was the last time that you have seen that original?
A. The last time I saw the original?
Q. Yes.
A. Well, the last time I saw the original, that is the time I am with my sister and family in Mr. Hays' office.
Q. In Mr. Hays' office?
A. Yes, sir.
Q. That was about the last of December, 1900, was it?
A. Yes, sir.
Q. And that paper has never been seen since, has it, by you?
A. No, sir.
Q. Or any of your family, has it?
A. I do not know. It never has by me.
Q. Did you go to Mr. Sullivan's funeral?
A. Yes, sir.
Q. Did you come back on the train?
A. Yes, sir.
Q. Who were sitting together?
A. Well, my wife and my family.
Q. Who else?
A. And many people; I don't know who.
Q. Did you, coming back from the funeral on the train, have any conversation with Father Prefontaine?
A. Well, we got some talks, yes.
Q. Did Father Prefontaine ask you whether you thought Mr. Sullivan had left a will?
A. No, sir.
Q. You swear to that?
A. Yes, sir.

696 Q. You swear that Father Prefontaine did not, coming back on the train from John Sullivan's funeral, ask you whether you thought Mr. Sullivan had left a will?

A. Yes, sir.

Q. Did you not tell Father Prefontaine on that occasion that you thought there was a will?

A. That time?

Q. Yes.

A. I thought there was a will.

Q. Did you not tell Father Prefontaine you thought there was a will?

A. We did not talk no will at all; we talked some about different places from Paris and so on, because that was no place to talk when a man was just buried in the ground.

Q. Did you not in that conversation coming back on the train from John Sullivan's funeral say to Father Prefontaine that you thought there was a will, and that John Sullivan had said Father Prefontaine would not be forgotten, or words to that effect?

A. You tell me that again, will you, Mr. Howe?

Q. Yes, now listen. Did you not say to Father Prefontaine on the train coming back from John Sullivan's funeral——

A. Yes.

Q. —that you thought that John Sullivan had left a will, because you had heard Mr. Sullivan say that Father Prefontaine would not be forgotten?

A. No, sir.

Q. Did you not make substantially that statement to Father Prefontaine on that occasion?

A. No, sir.

697 Q. Do you want to be understood as swearing that you had no conversation with Father Prefontaine on the subject of Sullivan's will?

A. Yes, sir.

Q. And you are as positive of that fact——

A. Yes, sir.

Q. —as of any fact you have testified to here to-day?

A. Yes, sir.

Q. Do you want it understood, Mr. Daussat, that when you signed this original petition for letters of administration and the appointment of Mr. McCutcheon that you did not know what was in that paper?

A. No, sir, I no read the paper.

Q. I did not ask you that; I asked you whether you want it understood that you did not know what was in that paper?

A. No, sir.

Q. You did not know it?

A. No.

Q. You did not know what it was for?

A. No, sir.

Q. You did not know whether that was a mortgage of the house you lived in, did you?

A. Mortgage?

Q. Yes.

A. No, sir; I know it was a petition for to help Mr. McCutcheon; that was all.

Q. You knew it was a petition to help Mr. McCutcheon?

A. Yes.

Q. To be appointed administrator of Mr. Sullivan's estate, did you not?

A. Yes.

Q. You knew that?

A. Yes, I knew that.

698 Q. And when you swore to that, you knew that that was that kind of a petition, did you not?

A. When I signed it this same day?

Q. Yes.

A. This same paper?

Q. Yes.

A. I no read the paper.

Q. That is your signature to the affidavit, is it not?

A. Yes, it is mine.

Q. In this affidavit you swear that you have heard that petition read, that you know the contents thereof and that you believe the same to be true.

A. No, sir, I no read it at all.

Q. But when you signed your name to that affidavit, you knew that it was a petition to help Mr. McCutcheon to be appointed administrator?

A. Yes, sir.

Q. Now, when was the next occasion that you signed a paper for Mr. McCutcheon?

A. Well, a few days ago—after.

Q. A few days after?

A. Well, something there. They came into my place and they presented me papers, he got another man with him; I am very busy getting my lunch and I say, "I no got time now, Mr. McCutcheon, I no got time to read it at all," I says, "Mr. McCutcheon, because I am busy. I have no one here in the kitchen and I can't read it, and I can't sign it." He says, "Well, you can sign, you can take a few minutes to sign this." He says, "You say you want to help me and you say you won't sign this paper." I say, "I don't want to sign it before I see it." "Well," he say, "it will be all right," and he

699 says something further one, you know, what I have got to do and I sign that paper. I don't know what I sign, because he is my lawyer before and I suppose the paper would be all right.

Q. And he was your lawyer at that time, was he not?

A. Yes, sir.

Q. And yet you did not tell him anything about this will that you say Mr. Sullivan made?

A. No, because this time I heard it was no good.

Q. But why did you not ask your lawyer whether he thought it was any good?

A. Well, I don't know.

Q. If you walk down the street and you meet a lawyer who is not your lawyer, and he gives you his opinion, do you act on his opinion, or do you go to your own lawyer?

A. I no ask anybody in the street.

Q. You did not know that the priest had asked a lawyer on the street, did you?

A. How?

Q. I say you did not know that the priest met a lawyer either on the street or at the entrance to the building, going up into the building where he had his office?

A. I did not know if there was any lawyer on the street. My sister says this will we sign and the rest of the family is no good, he see a lawyer.

Q. Do you mean your sister went and saw the lawyer?

A. No, sir.

Q. Do you know where the priest saw the lawyer?

A. Why, certainly he did.

700 Q. Where did he see the lawyer?

A. He told me he see a lawyer.

Q. Where did he see the lawyer?

A. Me?

Q. No, the priest?

A. I don't know. He did not tell me. That is what she tell me. I no ask anything myself.

Q. When was it that Mr. McCutcheon gave you the third paper?

A. Well, a little while after the second paper.

Q. About what date was that?

A. I cannot recollect.

Q. What month?

A. I cannot recollect.

Q. Was it the month of October?

A. No.

Q. Was it the month of November?

A. No, it was in October.

Q. In October?

A. Yes, it was in October.

Q. Now, that paper you took home——

A. Well, I got a little more time to sign it there——

Q. You had a little more time to sign it at home?

A. I asked Mr. McCutcheon to leave me that piece of paper.

Q. Did you take it home?

A. Yes, sir.

Q. And how many times did you read it?

A. Oh, I don't know.
Q. Now, what was it?
A. I don't know what was it. I didn't want to sign it, that is all.
Q. You read it?
A. Yes, I don't want to sign it.
701 Q. What was it made you angry with Mr. McCutcheon?
A. I don't know; I can't recollect that.
Q. You don't know what made you angry with him?
A. No.
Q. Do you mean to say that a lawyer whom you trusted sufficiently to twice sign papers that he asked you to sign——
A. No.
Q. —Wait until I get through—that because he asked you to sign a third paper that you got angry with him?
A. Yes.
Q. That you got so mad with him that you would not have anything to do with him?
A. I got suspicious there was something wrong.
Q What made you suspicious?
A. I don't know, I can't recollect that.
Q. You can't recollect what made you suspicious?
A. No, sir, except I think I heard him say—somebody say he ain't good in law and I don't want to have anything to do with him, I don't want to sign the paper.
Q. That is what made you suspicious?
A. I don't know—something—I don't know—I can't recollect.
Q. You have no more idea of what made you suspicious of Mr. McCutcheon, than you have about the day that you were married, have you?
A. No, sir.
Q. And you don't know what that document was at all, do you?
A. No, sir.
702 Q. You do not know what it related to?
A. No, sir.
Q. Was it a paper connected with Mr. Sullivan's estate?
A. I do not know, probably, I do not know.
Q. You do not know whether it was a mortgage of your restaurant or not, do you?
A. No, I do not know, I do not know what it was; I can't.
Q. You do not know whether it was a petition to the governor to have you appointed notary public, do you?
A. Maybe it was a petition of some kind; I don't know.
Q. No; listen. You do not know whether it was a petition to the governor to have you appointed a notary public, do you?
A. Appointed?
Q. Yes, to give you an office?
A. No, sir, I am sure it was not that.
Q. You are sure of that?
A. Yes, sir.

Q. What makes you sure of that?
A. Well, because.
Q. Because what?
A. I know the gentleman; he no wanted me appointed any officer.
Q. Then you think it was something that Mr. McCutcheon wanted?
A. Yes, sir. I am afraid because I seen the papar and I see what he got me to sign before, and he might be putting up something against my sister—see?
703 Q. What made you suspicious then was, that you thought that was a paper that was against your sister; is that it?
A. Well, something wrong.
Q. What was it that made you think it was wrong.
A. I don't know; I can't recollect it.
Q. That you bear in mind now and you can recollect what Mr. Sullivan said the night before he died?
A. Oh, yes, sir.
Q. Repeat the words he said.
A. I told you a hundred times, Mr. Howe.
Q. Tell me a hundred and one times then.
A. Well, I can.

Mr. HAYS: I object to the question for the reason it is not cross-examination; second, it has been answered and reanswered and repeated until it has drawn out this record almost interminably.

Q. Now repeat it.
A. "I want you to remember and witness that I will all my—that I will all my properties and personal effects, worth many thousands of dollars, to be the money and the properties of your sister Marie. I am sick and I do not know what can happen—might happen."
Q. Now, will you swear that those are the exact words she said?
A. Yes; sir, yes, sir.
Q. You swear positively to that?
A. Yes, positively.
Q. Were those words, to use the language of Mr. Hays, burned in fire in your mind?
A. No sir.
704 Q. Now, Mr. Daussat, you objected to Mr. Sullivan's furniture being removed from his room, did you not?
A. Yes sir—no, I no object. I am sorry I no object because I no be there, I am in my business.
Q. I do not understand you?
A. I am sorry I no object. It was not in my mind first and the time they took the furniture I am in my business place.
Q. But you went to the telephone, did you not, to object?
A. Yes, sir.
Q. Why did you want to object?
A. Because I make my mind that I think that furniture and

everything he got belonged to Mr. Sullivan, belongs under the will to my sister Marie.

Q. Now, what day was it you went to the telephone to object?

A. Well, after my wife telephoned to me Mr. Sullivan is dead.

Q. That is, the same day?

A. Yes, sir.

Q. The day on which he died?

A. Yes, sir.

Q. Now at that time you thought that your sister was the owner of the Sullivan building, did you?

A. Yes, sir.

Q. And you complained to the elevator boy that no crape was on the building, did you?

A. The day after.

Q. The day after?

A. After he dead.

Q. Why did you not put crape on the building?

A. That is a question I cannot answer.

705 Q. Well, what was your reason?

A. Because I knew they got a manager of Mr. Sullivan there in the building, and after we got away home, my sister——

Q. But the building you thought belonged to your sister?

A. Yes, sir, certainly.

Q. And you thought that that building and Mr. Sullivan's property was worth several hundred thousand dollars, did you not?

A. Yes, sir.

Q. And although you thought that that property worth several hundred thousand dollars was the property of your sister, you acted on the advice of some lawyer who gave an opinion to the priest, which lawyer you never saw, is that true?

A. Me?

Q. You and your sister?

A. I acted on the request of my sister, yes, sir.

Q. I say your sister and yourself?

A. Yes.

Q. You never mentioned these writings to any lawyer because you understood that some lawyer had said an oral will was no good?

A. Yes.

Q. And yet before that the priest told your sister that the oral will was no good, you thought your sister was the owner of Sullivan's property, exceeding several hundred thousand dollars in value?

A. Well, we believed that will was good.

Q. You believed that will was good, but after the lawyer said so, you thought it was no good?

A. After the lawyer said so, yes, sir.

706 Q. And you kept the fact quiet about Mr. Sullivan making this will until you went to Mr. Hays?

A. This will good, you say?

Q. I say you kept the fact that Mr. Sullivan had said these words quiet from the time the priest told you it was no good?
A. Yes.
Q. And until you communicated that fact to Mr. Hays?
A. Yes.
Q. Although you thought that that deprived your sister of several hundred thousand dollars' worth of property, is that true?
A. I no understand this last.
Q. I will put it over. If the opinion of the lawyer had been that the will was good, then your sister would have got, as you understand it, Sullivan's property worth several hundred thousand dollars?
A. Yes.
Q. Would she not?
A. Yes, I think so, yes.
Q. And the priest told your sister that the will was no good?
A. Yes.
Q. And then you concluded that the will was no good?
A. We concluded we wanted a written will.
Q. I say you concluded that this will, though, was no good?
A. We concluded that he got some other written will, and Mr. Sullivan in giving these words wanted just—he notify my sister that he got the will ready.
Q. Then when the priest told you——
A. He no tell me at all.
707 Q. Wait one minute; when the priest told your sister that this will you had was no good, that made you think that Mr. Sullivan had left a written will?
A. Yes.
Q. And that what Mr. Sullivan had been saying the night before he died was, what was in that written will?
A. Yes.
Q. Was that it?
A. Yes.
Q. Up to that time you thought this was his will?
A. Up to that time; yes, sir.
Q. You thought this one you had in your possession was his will
A. Yes, sir.
Q. Now, after he—if he did not leave a written will, if no written will could be found, why did you people not go to Mr. McCutcheon or to Judge Burke, or to some other lawyer, and ask them whether those two papers that you had, made a good will or not?
A. Well, I went to see those lawyers to compel them to find that will, to produce the will—the written will.
Q. I am talking about this will, the will which you say Maria Carrau wrote out.
A. Yes.
Q. Why did you not go to some lawyer and ask him if that was a good will?

A. Because the other lawyer told my sister that it was no good.
Q. You never saw the lawyer?
A. Me?
Q. Yes.
A. No, sir.
Q. And all you know about it is what your sister told you?
A. Yes, sir.
708 Q. And you were willing to accept the opinion of a lawyer whom you had never seen?
A. Yes, sir; I accept what my sister Marie say; yes, sir.
Q. And accepted the opinion of a lawyer whom you had never seen?
A. Well, I accepted it, yes—she accepted it.
Q. Although that opinion involved property worth several hundred thousand dollars?
A. Yes, sir.
Q. Mr. Daussat, you have had considerable litigation, have you not—you have been in court a number of times, have you not?
A. In court?
Q. Yes.
A. Yes.
Q. Mr. McCutcheon has conducted a case for you up to the supreme court, has he not?
A. Yes.
Q. Mr. Brady conducted a case up to the supreme court for you?
A. Yes, sir.
Q. And how many times in the past five years have you been in court?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial.

A. Two times and I win all the time.
Q. You win all the time?
A. Yes, sir.
Q. And you thought, did you not, that that was a pretty good starter in this case?
A. No, sir.
Q. You did not?
A. No, sir. I did not think anything of the kind at all.
709 I never wrong anybody, but sometimes in the business, though, we have those things, but I am as honest as anybody.
Q. Speak slower and speak plain.
A. I say, I am so honest with everybody, and these cases I win, but sometimes in business they make a man down.
Q. I do not understand you.

Mr. HAYS: He says he is as honest a man as anybody, but sometimes a man's business make him down.

A. Make him down and I win the cases.

Q. Now, is not this the first time that you ever have acted on the opinion of a lawyer whom you never saw?

A. This is the first time I act on an opinion and what my sister say, but that is for my sister.

Q. Now, do you think, Mr. Daussat, that if this will had left the property to you instead of to your sister, you would have accepted the opinion of a lawyer that the will was no good, if you had never seen that lawyer?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial, and not cross-examination.

A. You tell me that again, will you?

(Question read.)

A. Well, I don't know either, because after my sister say the will is no good; I am believing my sister, and I do what my sister wants after. We make up our minds he got probably one written will.

710 Q. The first time that you thought there was a written will was when you found that these papers which your sister had written out were no good?

A. The first time?

Q. Yes.

A. What papers?

Q. Did you not tell me that your sister put Mr. Sullivan's words down in writing?

A. Yes.

Q. And the first time that you came to the conclusion that Mr. Sullivan had made a written will was when you found that these papers that your sister wrote out were no good?

A. Yes.

Q. Is that true?

A. Yes, after we found these no good—the lawyer say no good.

Q. Up to that time you did not think there was any other will, did you?

A. We think there is a will, that he made it the night before, that that was the real will, the proper will.

Q. You thought that that was the only will he made?

A. Yes, sir.

Q. Now, when you people went up to Mr. Sullivan's room and he spoke those words, have you told me all that was said in the room on that occasion?

A. All we went in the room? I like to understand before I answer in these cases.

711 Q. After you and your wife and your sisters went into Mr. Sullivan's room and Mr. Sullivan said those words, was anything else said than what you have told me?

A. No, sir; nobody else.

Q. Nobody else said anything?

A. No, sir.

Q. And then you went downstairs?
A. Yes, sir.
Q. And you left Marie in Mr. Sullivan's room?
A. Yes, sir.
Q. Then Marie came downstairs soon afterwards?
A. Yes.
Q. And she went to the writing desk?
A. Yes.
Q. Did she go to the writing desk as soon as she came into the room downstairs?
A. Well, I am in my room at that time and I go back in the parlor what has got the desk in—I go back in the room and I see she write on some paper there.
Q. Now, you understand that the words that Mr. Sullivan spoke left all of that property to your sister?
A. Yes, sir.
Q. And you went to bed and slept quietly, did you?
A. Oh, I don't know whether I sleep or not.
Q. It did not excite you, did it?
A. I don't know.
Q. Did it or did it not?
A. I am a very quiet man.
Q. You are a very quiet man?
A. Yes, sir. If I get ten millions dollars, it don't make any difference to me.
Q. If you get ten million dollars, it does not make any difference to you?
A. No, sir.
712 Q. And, as a matter of fact, it did not make any difference?
A. Well, that is what I say; I am an old man now.
Q. I say, did it or did it not make any difference?
A. Oh, some little difference, probably.
Q. You were excited over it?
A. Oh, a little bit.
Q. Did you congratulate each other over it?
A. Oh, certainly.
Q. Did you shake hands over it?
A. No, no necessity for shaking hands; all in the family, you know.
Q. Did you kiss any?
A. No, no kiss either.
Q. French people are emotional, are they not?
A. I don't know. I don't know they are much in America; I know they are much in the France.
Q. They are more so than the Americans, are they not?
A. I don't know.
Q. Now, how long did you stay in the room downstairs before you retired for the night?
A. In the room upstairs?

Q. No, how long did you remain in the room downstairs before you retired for the night?

A. Well, I living downstairs, just the next room.

Q. Did you go back upstairs?

A. No, sir; I live downstairs.

Q. Oh, you live downstairs?

A. Yes sir: at that time.

Q. Did you go to bed?

713 A. Soon I went to bed, about twelve o'clock.

Q. Twelve o'clock?

A. Or half-past eleven.

Q. And had your wife gone to bed or did you go together?

A. No, all together.

Q. And had Miss Hermance gone to her room?

A. I don't know what Hermance and Marie were doing. We leave Hermance and Marie together.

Q. They room together, do they?

A. Yes, we leave them in the parlor.

Q. You went to your room before they went to theirs, did you?

A. Yes, sir.

Q. And you had gone to your room before twelve o'clock?

A. Well, after somewhere between half-past eleven and twelve.

Q. Now, at what time on the day that Mr. Sullivan died was it that you signed your name to that pink paper?

A. The day he died.

Q. Well, what time of day?

A. Between ten and twelve.

Q. Between ten and twelve?

A. After ten and twelve.

Q. Was it after eleven?

A. Well, I can't tell you exactly. I know that is more than ten anyhow—about eleven—something there.

Q. About eleven?

A. About eleven—something there, yes.

714 Q. Now what time was it that you left your restaurant?

A. In the morning?

Q. Yes, to go back to your house?

A. Well, as soon as I got the news that Mr. Sullivan was dead.

Q. But I am asking you what time of day it was?

A. Oh, probably nine o'clock something.

Q. Nine o'clock?

A. Probably a quarter of nine, something there. It was about nine o'clock I can't say sure—it was between eight and nine anyhow.

Q. Now Miss Carrau was very much agitated by the death of Mr. Sullivan, was she not?

A. The death? Yes, sir.

Q. Very much distressed?

A. Yes, sir.

Q. Was she capable of transacting any business at that time?

A. Transacting?
Q. Yes, sir.
A. She can do anything she see fit and can transact business if she wants.
Q. Was she crying a great deal?
A. Oh, sometimes, yes.
Q. I mean on that day?
A. Certainly, in the morning I found her crying.
Q. You found her crying in the morning?
A. Yes, sir.
Q. And did she continue in a distressed condition up to Mr. Sullivan's funeral?
715 A. She was very affected; sometimes they got quiet times but they——
Q. But was she overcome by her grief?
A. Yes, she was much agitated.
Q. Very much agitated?
A. Yes, sir.
Q. Was she nervous?
A. Yes, sir.
Q. Very nervous?
A. Very nervous.
Q. And yet, Mr. Daussat, you want it understood that Miss Marie Carrau, between ten and eleven or eleven and twelve o'clock on the day Mr. Sullivan died, wrote this paper and got you people whose names are on it to sign it?
A. Yes.
Q. You want that so understood?
A. What—about signing the paper? Yes, sir.
Q. At that time?
A. Yes, we sign it at that time.
Q. And at that time she was in a very much distressed and nervous condition, was she?
A. Well, she was nervous.
Q. And very much distressed?
A. Other people is somewhat nervous.
Q. And very much distressed?
A. Yes, sir, she is distressed, that he died.
Q. You know your sister's signature, do you not?
A. Well, yes, it is pretty near the same as all the girls'.
Q. The signature of Marie Carrau there?
A. Yes, sir.
716 Q. To the petition for Mr. McCutcheon to be appointed, that is in the handwriting of your sister?
A. Yes, sir.
Q. The name "Marie Carrau," on this pink paper is in the handwriting of your sister, is it?
A. Yes, sir.
Q. Will you tell me why your sister in signing that petition writes

her name "Marie" in that way (showing) and on this paper (referring to pink paper) writes it in this way?

A. I can't tell you that.

Q. You notice it, do you not?

A. Yes.

Q. That the name "Carrau" on the pink paper, the stroke of the pen on the last letter is to the right, do you not?

A. Well——

Q. I say do you not?

A. I do not know.

Q. Can't you see?

A. Yes, I see that. Well——

Q. Then you notice it is to the right, do you not?

A. Yes, I notice it is to the right.

Q. You notice on this one to the petition for the appointment of the administrator, she writes it in an entirely different way, do you not?

A. It is just the same; I do not see any difference.

Q. You cannot see any difference between those two?

A. No, sir.

Q. Then you think that those two names are written just alike do you?

A. Yes, sir.

Q. And she was no more agitated then when she wrote out the letter which is on the pink paper, than when she signed the petition for Mr. McCutcheon?

A. I don't know.

717 Q. Was the writing in pencil written with a blue or black pencil?

A. What?

Q. On the night Mr. Sullivan spoke the words?

A. I can't tell you that; I don't recollect.

Q. Did you say to Marie, "What are you writing there?"

A. Yes, sir.

Q. Did she tell you what she was writing?

A. Well, she says she is writing something.

Q. Well, did she tell you what it was?

A. And she say she don't want to forget the names—she put them in here on the paper, she don't want to forget the names, Mr. Sullivan he say.

Q. What did you say to her then?

A. I say, "That is all right; that is your business."

Q. And what did she say to that?

A. Nothing.

Q. What did Miss Hermance say?

A. I don't know.

Q. What did Mrs. Daussat say?

A. I don't know.

Q. Now, your sister consulted you as to whether she should marry Mr. Sullivan did she?

A. Yes, sir.

Q. And when was that?

A. Well, a little while before he commenced sick.

Q. Well, about what date was it?

A. I can't tell you the number of the day.

Q. What month was it?

A. That was in September.

Q. It was in September?

A. Yes, sir.

Q. Was it before the middle of September?

718 A. I think so, yes.

Q. And do you know the day that she gave Mr. Sullivan her answer?

A. No, I know that it is pretty near a week before, because she tell me that he asked a week.

Q. That she asked a week?

A. Yes, sir.

Q. Now, did she tell you what Mr. Sullivan had said to her?

A. Tell me? Yes, sir.

Q. What did she say?

A. Well, he say he wanted her to marry him and we go to Paris together, and he give her all the property to her.

Q. Was he to will her the property or give her the property?

A. Give her the property.

Q. Give her the property?

A. Give her all the property.

Q. That is, he was to give her the property in his lifetime?

A. Well, that is all she tell me—in the married time.

Q. What did you tell her?

A. I told her the gentlemen was very kind in this country and he was a nice gentleman and I can't see what objection because she is no very young, and the man, another thing, he had plenty of money, she can enjoy it with him. That is just exactly what I said.

Q. You knew he was quite a wealthy man?

A. Yes, sir.

Q. She knew he was quite a wealthy man?

719 A. Yes, sir, because he told all the things of his business to her.

Q. He told all his business to her?

A. All his business to her.

Q. Did he ever tell you anything about his business?

A. No, sir; we talked sometimes about the rent he get in the building, something there, very little.

Q. Now, when did you first know that she had accepted Sullivan, that she had agreed to accept him?

A. Just at the time she gave her answer.

Q. Did she tell you afterwards——

A. We came in the parlor and Mr. Sullivan is very enjoy, and we shake hands and "accept the good wishes, sir," and said "All right, I accept a good deal myself."

Q. Did Madame Daussat go into the parlor then?

A. Oh, everyone.

Q. And what time of day was it?

A. I can't recollect the day.

Q. Well, about what time of day was it?

A. Well, that was the middle of the month, that is very near the middle of the month—something like that

Q. In the middle of the morning?

A. In the middle of the month—September.

Q. Oh, in September?

A. Yes, sir.

Q. What time of day?

A. I can't recollect the day, Mr. Howe.

Q. Well, about what time of day?

A. I can't recollect.

720 Q. Was it before twelve o'clock or after twelve o'clock?

A. What?

Q. That she——

A. That was afternoon.

Q. That was in the afternoon?

A. Yes, sir.

Q. And was it before three o'clock or after three o'clock?

A Well, I can't recollect whether it was after three or before three, but it was in the afternoon, because I go home sometimes two, and sometimes three and sometimes——

Q. And it was about the middle of the month?

A. Well, a few days before he commenced sick.

Q. How many days before he became sick?

A. Well, I don't know. I think that was four or five days.

Q. And when was he taken sick?

A. Well, he was taken sick in September, in the——

Q. Well, about what time?

A. I don't know, because I didn't stay much home, I can't recollect the days.

Q. You can't recollect the day he was taken sick?

A. No, sir.

Q. Can you recollect how long he was sick before he died?

A. I can't recollect, the days, how long——

Q. You can't recollect the days?

A. —because I stay very little home.

Q. Was it two weeks after he was taken sick that he died?

721 A. Well, he stayed sick; I can't recollect just exactly; he stayed sick probably between ten and fifteen days.

Q. Ten and fifteen days?

A. I can't recollect for sure the day.

Q. Now, who called you in the parlor when you all went in there and shook hands?
A. Well, Marie.
Q. Marie called you in?
A. Yes.
Q. And what did she say?
A. Well, I told her before she can accept and all that, and she said, "Mr. Sullivan is here now in the parlor, and you come, and I told Mr. Sullivan everything, that I accept," and we go there, and——
Q. And where were you before you went into the parlor, in what part of the house?
A. In the front part of the house.
Q. In the front of the house?
A. Yes, sir, in the parlor, the first parlor.
Q. In the first parlor?
A. Yes, sir.
Q. And where was Mr. Sullivan and Miss Carrau?
A. In the first parlor.
Q. Yes, but what I want to get at is before you went into the parlor, where were you?
A. Oh, I went into the middle room.
Q. In the middle room?
A. Between the kitchen and the parlor.
Q. That is the dining-room?
A. Yes, sir.
Q. Was there next to that room a sitting-room or a parlor?
A. A parlor.
722 Q. How long had you been there before she called you in?
A. Oh, just a little while.
Q. Well, how long?
A. I do not know; I can't recollect.
Q. Was it an hour?
A. I can't recollect.
Q. Was it an hour?
A. No, it was not an hour.
Q. Was it a half hour?
A. Well, probably fifteen minutes or twenty minutes.
Q. Fifteen or twenty minutes?
A. Just a very short time.
Q. Did you see Mrs. Eames there that day?
A. No, sir.
Q. Did she pass through the sitting-room?
A. That day?
Q. While you were there?
A. That day?
Q. Yes.
A. No, sir.
Q. Did you hear her go to the telephone and call up central with it?

A. No, sir.
Q. Did you see her in the house that day?
A. No, sir, I did not make any attention on that.
Q. How long had Miss Carrau and Mr. Sullivan been in the parlor before you were called in?
A. I can't tell you, sir, I am not at home.
Q. Oh, you were not at home?
A. I am in my business.
Q. Well, when did you go up to the house that day?
A. Well, from my business I go to the house.
723 Q. When did you go up to the house that day?
A. I told you sometimes two and sometimes three.
Q. No, but on that day?
A. When I go? I go every day, sir.
Q. When did you go up to your house on the day that Miss Carrau accepted Mr. Sullivan, agreed to marry Mr. Sullivan, and called you in the parlor, what time of day was it?
A. In the afternoon.
Q. What time in the afternoon?
A. Well, I can't tell you exactly, because I——
Q. What did you go home for?
A. Because I go every day?
Q. What time did you every day?
A. I go every day after two or three.
Q. Every day after two or three?
A. Yes, sir.
Q. And how long did you stay there?
A. Why I stayed until sometimes four and sometimes five.
Q. And were you there from two or three o'clock until six?
A. What?
Q. At your house?
A. No, sir.
Q. How long did you stay up there?
A. Well, I stay every day until four o'clock.
Q. Do you take your dinner down town?
A. No, sir, I take it in my home many times, sometimes I take it in my place. I run a restaurant.
Q. Did you take it home or down town that day?
A. I can't tell you.
Q. Did you or did you not?
724 A. I can't tell you. Sometimes I take it here, sometimes home.
Q. Can you remember on the day that your sister agreed to marry Mr. Sullivan you ate dinner at home?
A. No, I think I got dinner at the restaurant.
Q. You think you got dinner at the restaurant?
A. Yes, I think so.
Q. Now, where is the telephone in your house?
A. The telephone is in the front door—in the doorway and back

in the corner of the door. As soon as you open the door, it is in the corner.

Q. In the corner.
A. The north corner.
Q. How many feet is it from the door opening into the parlor?
A. I can't tell you the feet.
Q. About how many feet?
A. I can't tell you the feet.
Q. About how many feet?
A. I can't tell you the feet.
Q. Is it about four feet?
A. It is very close.
Q. It is very close.
A. The door and the telephone is very close.
Q. Very close.
A. Probably three feet—three or four feet.
Q. Three or four feet?
A. From the door—the parlor door—you said the parlor door?
Q. Yes.
A. And the telephone probably three or four feet.
725 Q. And the sofa in the parlor is close to the door, is it?
A. Close to the door, yes, sir.
Q. Could anybody be sitting on that sofa without hearing a person go to that telephone and call up central?
A. Yes, sir.
Q. They could?
A. Yes, sir.
Q. If the door was open?
A. Yes, sir, they can hear it easy.
Q. They could easily hear it?
A. Yes, because it is very close.
Q. Doctor Carman was Mr. Sullivan's physician, was he not?
A. Yes, sir.
Q. Doctor Eames lived right next door to your house, did he not?
A. Yes, sir.
Q. Mrs. Eames was very intimate at your house was she not?
A. Well, she is coming in the house many times.
Q. She was very intimate at your house, I say?
A. She came many times to our house.
Q. Did she have a key to your front door?
A. Yes, sir.
Q. And did she use your telephone?
A. Yes, sir.
Q. She had no telephone, did she?
A. No, sir.
Q. Yours is a ten-party line, is it?
A. What?
Q. Is yours a ten-party line?
A. Party line?

Q. Yes, is your telephone what they call a ten-party line? You understand that?

726 A. No, I don't understand that.

Q. What price do you have to pay for your telephone?

A. A dollar and a half.

Q. A dollar and a half?

A. It has got different lines.

Q. There are several people on the same line?

A. Yes, sir.

Q. It is one of those that ring quite often without calling you up?

A. Yes, sir.

Mr. HAYS: Let the record show that John B. Wright, who disclaims to be of counsel in this case, has participated in all of the examinations of the witnesses thus far, in prompting counsel for complainant as to what questions to ask witnesses.

Q. Now, Mr. Daussat, you say that after you found that this will was no good, you came to the conclusion that Mr. Sullivan must have left a written will?

A. Yes, sir.

Q. Did you come to the conclusion that you had been mistaken as to what Mr. Sullivan had said the night before he died?

A. No, sir.

Q. Did you come to the conclusion that he must have meant that he made a written will and was telling you what was in it?

A. Yes, sir.

Q. When Miss Carrau asked you to sign this pink paper, what did she say to you?

A. She said: "There is a paper I wrote the night before in ink, because this is poor paper, soft paper, you can't see much; and," she says, "now I want you," she says to me and my wife,

727 "to see that these words that he said last night are correct, and I believe we are making this will, the real will, and now you see that those are just as his words that he say." I look many times, and my family looked, too, and we conclude that those were the real words that Mr. Sullivan say.

Q. And that that was his will.

A. Yes, sir.

Q. And she asked you to witness that as his will?

A. Yes, sir, because all my sister and my wife's family is all lawyers in the family, all lawyers or notaries or doctors. I want to tell you that.

Q. All your family?

A. All the family of my wife for many hundred years.

Q. For many hundred years?

A. Doctors, lawyers or notaries. Not notaries like they have here, but notaries like they have in France.

Q. Now, what were the names of some of the members of her family who were lawyers?

A. Well, her father was a lawyer.
Q. In France?
A. Yes.
Q. They have there what they call the civil law, have they not, in France?
A. The civil law?
Q. The civil law; do they have nuncupative wills in France?
A. I don't know.
Q. Do they have oral wills in France?
A. I don't know. The father is dead long ago.
Q. But I mean does the French law allow oral wills?
A. I don't know.
Q. You don't know?
728 A. I am no lawyer myself; I never understood the law. I am very poor man in law.
Q. But it was your wife's family——
A You tell me to cook a steak, I will do it all right.
Q. I will find out some day; but it is your wife's family who have the lawyers in it?
A. Yes, sir; one of her brother in laws was a judge for twenty years at one place.
Q. At what place—in France?
A. In the south of France.
Q. That was her brother?
A. The sister of my wife.
Q. That is, the brother of Miss Carrau?
A. The sister of my wife; she is married, and the brother of my wife's sister, he is a judge for twenty years in the same place.
Q. Now, did you ever discuss the subject of wills with Mr. McCutcheon—did you ever talk about wills with Mr. McCutcheon?
A. What kind of will?
Q. Any kind of will.
A. No, sir.
Q. Did you talk with Mr. McCutcheon on the subject of wills at all?
A. No, sir.
Q. Now, did you ever tell Mr. McCutcheon that Mr. Sullivan died without a will?
A. No, sir.
Q. Never said anything to him about a will?
A. No, sir.
Q. Now, when Miss Carrau said to you that she wanted you to witness this, that she thought that this was Mr. Sullivan's will, was she crying?
729 A. Crying?
Q. Yes.
A. No, sir, not at that time.
Q. Not at that time?
A. No.

Q. Have you told Mr. Hays before you came into this room all you know about this case?

A. What room?

Q. This room.

A. No, sir.

Q. Did you ever tell him, talk this case over with Mr. Hays?

A. Talk some few—very little.

Q. Had very little talk with Mr. Hays about it?

A. Yes, sir.

Q. Did you see your sister hand to Mr. Hays the pencil will?

A. Pencil will?

Q. Yes.

A. I saw her hand two.

Q. I say you saw her hand it to Mr. Hays?

A. Yes, sir.

Q. The same as this one?

A. Yes, sir.

Q. Did she tell Mr. Hays why she wrote out the two?

A. She said because the other paper was very poor paper, and you can't see very much on the pencil or the writing, and because we can't correct the words; she says she remember the words, and we correct the whole thing, and we sign, and she says she believed it was the real will, until the father, the spiritual adviser, said that will was no good.

Q. And the principal will was corrected up?

A. No, sir, that was just the same—just the very same.

730 Q. The pencil will had on it the date, September 25th, 1900?

A. Yes, sir.

Q. And the pencil will had on it 11:30 p. m.?

A. Yes, sir.

Q. And the pencil will had on it, "Mr. John Sullivan spoke to Louis Daussat"?

A. Yes, sir.

Q. "Augustine Daussat"?

A. Yes, sir.

Q. "And Hermance Carrau"?

A. Yes, sir.

Q. "At about 11 o'clock p. m. of this day"?

A. Yes, sir.

Q. "These words"?

A. Yes.

Q. Now, you are sure that the pencil will had that on it?

A. Yes, sir.

Q. And you are just as sure that the pencil will had those words on it as you are that you signed this paper?

A. Yes, I signed that paper, yes.

Q. I say you are just as sure that the words I have read you——

A. I looked and the words are the same he said; that would be all right—I said the words would be correct all right.
Q. But what I have just read you was on the pencil will?
A. I can't remember these (showing) in the pencil will.
Q. You do not remember these (showing)?
A. I remember these (showing).
Q. But you do not remember those here (showing)?
A. No.
731 Q. Do you remember that those were not on the pencil will?
A. I no remember.
Q. You do not remember?
A. No, I can't recollect.
Q. How large a paper was the pencil paper?
A. It was a small paper.
Q. Was it as large——
A. I can't recollect just what the paper is.
Q. Now was it all written out smooth and clean?
A. No, it was a poor paper.
Q. It was a very poor paper?
A. It was a very poor paper; that is what I know.
Q. Did the pencil make holes through it?
A. It was a poor paper; you can't use it for ink or much for pencil.
Q. You do recollect this part was not on it?
A. I can't recollect them; I recollect all the words.
Q. The pencil paper was not signed by anybody?
A. No, sir.
Q. Did you see the pencil paper at the same time that you signed this?
A. No, I no see the pencil paper. She showed me to see these words that those were the same.
Q. You did not at that time——
A. We concluded they were the same words.
Q. You all agreed on that at that time?
A. Yes, sir.
Q. And your object in signing that up was to make it a good will, was it?
732 A. Yes, sir. I signed what Mr. Sullivan said, and I believed at that time I write that was the real good will.
Q. And you wanted to preserve that?
A. Certainly.
Q. And that was the reason you signed?
A. Yes, sir, because I believed that was the real will. She believes it was the real will after he died.
Q. And that belief you gave up when the priest told you that an oral will was no good?
A. No told me at all.
Q. Told your sister?

A. Yes, sir. I do everything at her request in this case.

Q. You remember going up to the superior court last March and giving your testimony, do you not?

A. Yes.

Q. Just before going up there, whose office had you been to?

A. What office?

Q. Yes, whose office had you been in before going up to the court-house that morning?

A. What kind of office, what kind of office you mean?

Q. What lawyer?

A. That was Mr. Hays.

Q. Mr. Hays?

A. Yes, sir.

Q. Now, you gave your testimony in court that day, did you?

A. Yes, sir.

Q. And you repeated the words of Mr. Sullivan there just as you did here?

A. Yes, sir.

Q. And since that time you have not repeated those words until you have repeated them in here?

733 A. Who repeated them?

Q. You.

A. I repeated them myself?

Q. Yes.

A. Sometimes.

Q. Do you say them over every day?

A. No, sir.

Q. Say them over every week?

A. Yes, sir.

Q. Every month?

A. Yes, sometimes they come into my mind, that is all, but I never repeat them.

Q. Well, do you think them over in your mind every day?

A. They are pretty good in my mind all the time.

Q. Well, do you think those words over every day?

A. No, sir.

Q. Every week?

A. Well, I can't tell you that.

Q. You don't know how often?

A. No. I got so many things in my head too, but they can't get away, they are there all the time.

Q. The most important thing that you or your family have—about the most important thing that you and your family have on hand, and have had on hand since Mr. Sullivan's death, is the establishing of this will, is it not?

Mr. HAYS: I object to this question as being incompetent and impertinent.

A. Well, we prove it—we go into court and we say
734 all the words what Mr. Sullivan say. We believe it was good, we believe all the time.

(Signed) LOUIS DAUSSAT.

Read over to witness, by him corrected and subscribed and sworn to before me this 24th day of March, A. D. 1902.

[SEAL.] EBEN SMITH,
United States Master in Chancery and United States Examiner and Special Commissioner.

Mr. HOWE: Complainant now offers in evidence a copy of the amended answer of Marie Carrau in the matter of the estate of John Sullivan, wherein Johanna Callaghan and Edward Corcoran were petitioners *vs.* Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, in the superior court of the State of Washington, in and for King county.

Mr. HAYS: Counsel for defendant, Marie Carrau, objects to the introduction of the amended answer offered for the reason that it is incompetent, irrelevant and immaterial and simply tends to encumber unnecessarily the record in this case, not objecting to it, however, because it is not a certified copy or duly authenticated.

(Paper writing referred to offered in evidence and marked for identification as Complainant's Exhibit "Y 51."

(Signed) LOUIS DAUSSAT.

——— ———,

[SEAL.] *U. S. Master in Chancery.*

735 And thereupon an adjournment was taken to 10 o'clock Monday morning, March 10, 1902.

SEATTLE, WASH., *March* 22, 1902.

Present: Mr. Howe, for complainants. Mr. Hays, for defendants. The master in chancery.

The witness Mr. LOUIS DAUSSAT, having heard read his testimony as transcribed, and being now present for the purpose of correcting the same, the following proceedings were had and testimony taken:

The MASTER IN CHANCERY: When I came to read to him about the interview with Father Prefontaine on the car, and I read to him the question on page three hundred and ninety-six, line twenty, "Did Father Prefontaine ask you whether you thought Mr. Sullivan left a will?" And he answered "No, sir," he said, "Oh no, that is wrong"—that he wanted to correct that.

(Mr. HAYS:)

Q. Mr. Daussat, in answer to a question propounded to you by Mr. Howe as follows: "Did Father Prefontaine ask you whether you

thought Mr. Sullivan left a will?" Your answer here was, "No, sir." Is that the fact, did Father Prefontaine say anything to you about a will?

A. Yes sir.

Q. Now, then, state what it was, if anything?

A. Well, coming back from the cemetery in the car, he came and sat down by myself, in the same place.

Q. Where you were sitting?

A. Yes. And he say "You talk French?" I say, "Yes,
736 sir, I talk French; that is right," and he say, "Mr. Sullivan is dead, the poor gentleman, and in the cemetery," he say, "You believe he make any will?" I say, "Yes." He say, "I am sorry—if I did not come and see him when he was sick."

Q. Do you mean, "If I did" or do you mean "I am sorry I did not"—which way do you mean, what do you mean? I do not understand you.

A. If I did not come and see him while he was sick.

The MASTER IN CHANCERY: He says that he said, "I am sorry if I did not come and see him while he was sick."

Q. Oh, that is it?

A. Yes, sir.

Q. Did he come and see him when he was sick?

A. No. He said, "I am sorry I did not come and see him when he was sick."

Q. What did you say? Did you make any further statement concerning a will?

A. Well, I said, "Perhaps if it is so, if you done so, Mr. Sullivan would have remembered you and would have remembered you in the will."

Q. In the will?

A. Yes.

Q. Was anything more said about the will in that conversation?

A. No, sir.

Q. Did you have any further conversation with him?

A. Yes, after that.

Q. Did you talk with him after that?

A. Well, we talked some.

Q. After that day have you had any conversation?
737 A. No, no, sir.

Q. Did you talk with Father Prefontaine before that day?

A. No, sir, never.

Q. Now, you answered here in this direct question to you that you had not talked about the will at all?

A. Yes, because I could not recollect at the time.

Q. You did not at that time recollect?

A. No, sir.

Q. How did you happen to recollect afterwards?

A. Well, I recollect that the same day I make the testimony here, when I go home.

Q. When you got home?

A. And I recollect what I had said and I thought many times that I recollect what he said—what Father Prefontaine had said.

Q. That you had talked with him?

A. Yes.

Q. Was that all the conversation that you had concerning the will?

A. Yes, sir.

Q. Is there any other correction that you think of in this testimony you want to make? You have heard it read over; is this the only correction?

A. That is all, except some matter about the beefsteak.

The MASTER IN CHANCERY: I have already made that correction; that is satisfactory.

(Signed) LOUIS DAUSSAT.

(Mr. HOWE:)

Q. Mr. Daussat, you knew what testimony Father Prefontaine gave in this case, did you not?

A. I did not know.

738 Q. Nobody told you what Father Prefontaine testified to?

A. No, sir.

Q. Have you talked about your testimony with anybody since you gave it here?

A. No, sir. I talked home with my wife and family, I told them I recollected that—I told that to my family.

Q. When did you tell them that?

A. I tell them as soon as I recollect it.

Q. Have you talked with anybody else about it?

A. No, sir.

Q. Have you talked with Mr. Hays about it?

A. Yes, sir.

Q. When?

A. I talk to him.

Q. When?

A. The day after.

Q. But you did not remember anything about what you testified to to-day the day you were giving your testimony?

A. In that case, no, sir.

Q. What was it you said you told Father Prefontaine about his being remembered?

A. At that time?

Q. Yes.

A. The first testimony?

Q. No; what was it that you now remember that was said about—said to Father Prefontaine about his being remembered?

A. Well, I remember after making this statement first to the gen-

tleman, I remember the conversation what I got—with Father Prefontaine.

Q. Well, what was it?

A. He asked me if I believe Mr. Sullivan, he got a will—

739 he made a will, I says, "Yes," and he say, "I am sorry I did not come to see him the time he was sick," and I say, "Probably, perhaps if you did—if you came in, if you had done what you say, Mr. Sullivan will have remembered you in his will."

Q. That was the conversation that took place?

A. That is the conversation that I got with him, the first conversation.

Q. Now, you remember very clearly that that conversation took place, do you?

A. Yes, sir.

Q. If you remembered that after you gave your testimony the other day?

A. Yes, sir.

Q. And the only people you talked with are your wife and Mr. Hays about your testimony?

A. No, sir.

Q. Since you gave it?

A. No, sir.

Q. Who else?

A. Me—I talk myself.

Q. To whom?

A. My wife and my sister.

Q. And your sister?

A. Yes, after I remembered——

Q. Which sister?

A. Well, all the ones.

Q. All of you spoke about it?

A. Yes.

Q. When did you talk about it?

A. As soon as I can remember.

Q. Then you talked about it more than once?

A. Oh, two or three times, I believe.

Q. Now at the time that you told Father Prefontaine that you thought Mr. Sullivan left a will, what will did you mean?

740 A. That is the will he say—the words he say before he die—the night before he died.

Q. That is the will you meant?

A. Yes, sir.

Q. It was not a written will?

A. No, sir.

Q. And did you tell him that you had signed a written will?

A. No, sir.

Q. Did you tell him that you had signed any written paper?

A. No, sir.

Q. Did you tell him that what Sullivan had said had been written out by anybody?
A. No, sir.
Q. Did you tell him that it was an oral will?
A. No, sir.
Q. You only said that you thought there was a will; was that it?
A. Yes, sir.
Q. You did not say that you knew there was a will?
A. No, sir.
Q. Now, that was the day that Mr. Sullivan was buried?
A. Yes, sir.
Q. Had your sister at that time told you that Father Sweere had told her that the oral will was no good?
A. No, sir.
Q. He had not told that at that time?
A. No, sir.
Q. And at that time you thought that was a good oral will, did you?
A. Yes, sir.
Q. Now, you say you did not know what Father Prefontaine testified to?
A. No, sir.
Q. Do you know that he testified in this case?
A. I do not know what he testified?
741 Q. I say——
A. I don't know.
Q. Did you know that he was a witness in this case?
A. Yes.
Q. Do you know what he said?
A. No.
Q. Who told you that he was a witness?
A. Well, Mr. Hays.
Q. And did he tell you what Father Prefontaine said?
A. No, I cannot remember that now.
Q. No, but did not Mr. Hays tell you what Father Prefontaine say?
A. No, he say he testify.
Q. But you do not know that he told you what he said?
A. No.
Q. Did he tell you anything about what he said?
A. Well, he said he testify.
Q. Yes, but did he say anything that he testified to?
A. No, sir.
Q. Was not that the time that you told Mr. Hays that you wanted to change your testimony?
A. That time?
Q. Yes.
A. The time I saw him I told him.
Q. Yes.

A. Well, he say—I say, "I remember," I say, "in the testimony after I think it over I say to Father Prefontaine he had that will, and I remember well that after I give the testimony, the day that we talk here—that you asked me that, and I say, yes, I remember that."

Q. Who asked you?

A. I say that myself to Mr. Hays.

742 Q. And did he not then tell you what Father Prefontaine said?

A. Well, he said the——

Q. He did not?

A. What?

Q. He did not tell you that?

A. I do not remember it. I do not know; I am not sure whether he said he had a will or not.

Q. Well, what do you think about it?

A. He said that—he asked me what he said, Father Prefontaine he said the time in the car, the talk that he got a will—he said that he got a will—I said he got a will.

Q. That was what Mr. Hays told you?

A. Yes.

Q. Now, do you not remember when you testified here before I put the question to you and asked you whether Father Prefontaine asked you whether you thought Mr. Sullivan left a will and you said no—you did not say so?

A. Well, I cannot recollect at the time.

Q. I say, do you not remember my putting that question to you?

A. Yes, sir.

Q. Do you not remember that I called to your attention the fact that Father Prefontaine asked you whether you thought Sullivan left a will, that you said yes, and that you said that you had often say that Father Prefontaine will not be forgotten and you said no; do you remember that?

A. Be forgotten?

Q. Yes.

A. You want to explain that to me again, Mr. Howe?

743 Q. I say, do you not remember when you testified here before that I put this question to you: "Did not Father Prefontaine ask you whether you thought Sullivan left a will?" that you said yes, and that you said yes, because "I have often heard Sullivan say that Father Prefontaine will be remembered," and you said that no conversation took place; do you remember that?

A. Yes.

Q. And it was after going off the witness stand that you remembered it?

A. I remembered the same day, yes.

Q. And that was after Father Prefontaine had been a witness?

A. I do not know; I cannot recollect of that.

Q. Now, do you want me to understand that Mr. Hays did tell you what Father Prefontaine said as a witness?
A. Well, he talked to me that Father Prefontaine testified I told him he got a will.
Q. And what else?
A. That is all.
Q. That is all?
A. And I told him I remember well as soon as I got away from the court I remember I make a mistake, that I remember what Father Prefontaine asked me and what I say.

(Mr. HAYS:)

Q. You have related just exactly the conversation that did take place between you and Father Perfontaine?
A. Yes.
744 Q. You have related all the conversation, or the substance of it, that took place between you and Father Prefontaine as you were coming back with reference to this will?
A. Yes.
(Signed) LOUIS DAUSSAT.

Read over to witness by him corrected and subscribed and sworn to before me this twenty-fourth day of March, A. D. 1902.

[SEAL.] EBEN SMITH,
As United States Master and Examiner and Special Commissioner.

SEATTLE, *March* 10, 1902.

Continuation of proceedings pursuant to adjournment.
Present: Master in chancery, Mr. Howe, one of the solicitors for the complainant. Mr. Hays, solicitor for the defendant.

Mrs. E. SECKLER, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(Mr. HAYS:)

Q. Where do you reside?
A. Fourteen hundred and fifteen Seventh avenue.
Q. How long have you resided there?
A. Well, more than two years.
Q. How long have you resided in Seattle?
A. It will be five years this July since I have been here to live. I have been here at other times.
Q. Where did you reside before you came to Seattle?
745 A. Leavenworth, Kansas.
Q. Where were you born?
A. Iowa.
Q. Are you married?
A. Yes, sir.

Q. Have any family, any children?
A. One little boy.
Q. What is your husband's business?
A. He is a machinist.
Q. Where is he engaged?
A. Just at present in Christopher Bros. bicycle shop; he is a machinist by trade, but he is working there at present.
Q. Are you acquainted with the defendant, Marie Carrau?
A. Yes, sir.
Q. How long have you known her?
A. Almost three years.
Q. Were you acquainted with the deceased, John Sullivan?
A. Well, I knew him by sight but I never had any conversation with him.
Q. Had no personal acquaintance with him?
A. No personal acquaintance.
Q. Whereabouts is your residence located with reference to the defendant, Marie Carrau?
A. On—the adjoining building.
Q. The adjoining building?
A. Yes, sir.
Q. The building is all one building?
A. All one building.
Q. Now, what is there in the front of your place in the way of steps or veranda or porches?
746 A. Oh, we have a small porch.
Q. And you could step from one on to the other?
A. No. You go down the steps, but they are very near together.
Q. State what conversation, if any, that you ever heard between Mr. Sullivan and any one concerning in any way his residence at this place?

Mr. Howe: I object as incompetent, irrelevant and immaterial.

A. Well, the only conversation that I ever heard between him and any other party, was one afternoon, I was sitting on my porch, he and an elderly lady were coming up the street and they were talking about the exposition in Paris, and she made the remark how much she would like to go if she had the means. And he said that he had been, but owing to the fact that he was alone and did not understand the language—French—he did not enjoy his trip but he expected to go again very soon and told—she had joked him, they had stopped at the gate, they were coming up and had stopped at the gate and she had joked him about coming there to live. And he said well, he had come there for the purpose of learning French, so that when he made the second trip that he hoped to enjoy his trip more, and she says, "Sure you will not be going alone, will you?" and he said no that he did not know that he should but that—or that he did not expect to, it was just about that, to that effect, and they stood there for some little time talk-

ing, and he led her to think by everything that was
747 said that he had come there to make that his home, until he should go to Europe again, and when he went that he did not expect to go alone. And when she said that he would not be going alone—I cannot remember his exact words or hers, but at any rate she laughed at him and she told him that he would be taking one of these young ladies, and he said that he did not know but what he should or something to that effect, and I did not stay to listen any more; I was not there to listen.

Q. What did she say, if anything, concerning his age or anything about that?

A. Oh, that she thought that he had waited a long time to enter into matrimony, and he said that he did not know why; he had lived a lonely life all of his life and he did not know why in his old age he should not enter into matrimony; that is as near as I can remember it.

Q. Now, you were sitting on the veranda in plain view of these two people?

A. Yes, sir.

Q. They could see you?

A. Yes, sir.

Q. Did they know that you were hearing their conversation?

A. I am not sure I do not know that.

Q. Do you know as a fact whether they saw you?

A. Well, I am confident that she did, but whether he did or not I could not say.

Q. Now, Mrs. Seckler, how long was this with reference to his illness and death, prior thereto?

A. Well, I could not say positively, but it does not seem to me that it was very long.

748 Q. Were you aware of his illness?

A. Oh, yes, the morning that he was first taken ill they called me; they were very much excited and grieved; they called me to come in and assist in making a mustard plaster for them, and this young lady was so excited she could not do anything but cry.

Q. She was grieved then?

A. Very much; I made the remark to her not to grieve so, that he was not going to die, and she said that she hoped not, she hoped not. Of course we were neighbors there and we very frequently used to talk through the back windows to each other and through the back door, and we could not help but thinking from the first that there must be something of the kind between them from the mere fact that they had their rooms vacated on purpose for him.

Q. For his occupancy?

A. Yes, sir.

Q. And you are acquainted with the person who occupied them?

A. Very well indeed, very dear friend of mine.

Q. That lady that had occupied them?

A. Yes, sir.

Q. And who was that?

A. Miss Ahrian. I know that she believed the same as I did from the beginning——

Mr. Howe: I object as incompetent, irrelevant and immaterial and hearsay.

A. (Continuing:) I do not mean that Miss Adrian overheard any conversation that I overheard.

749 Q. Now, were you at the house at the time of Mr. Sullivan's death or afterwards?

A. Afterwards, yes.

Q. How soon after his death?

A. Well, perhaps an hour, possibly earlier than that. They called me but on account of my little boy I could not go to them at that time.

Q. And what did you find with reference to the family?

A. They were very much grieved.

Q. Any statements or conversation that you had then?

A. Not just at that time, but after his body had been taken down to the undertakers I went in to use the telephone and Miss Carrau, the young lady——

Mr. Howe: Counsel for complainant objects to any conversation or statements with the defendant, Marie Carrau.

A. She was in the hallway and her sister was there, and she was grieving so that I made the remark not to grieve so, and her sister said, "Oh, Mrs. Seckler, you will never know what we have lost in losing him."

Q. That was the sister?

A. Yes, sir, Mrs. Daussat, the married sister who made that remark. I had no conversation with Miss Carrau, only I asked her not to grieve so, but she was grieving so that she did not answer me, so I had no conversation with her that morning.

Q. At that time you had no telephone in your house?

750 A. No, sir, I did not. But I had one put in very soon afterwards.

Q. Have you been on close intimate acquaintance with the defendant Miss Carrau during the time that you have known her?

A. Yes, sir.

Q. Observed her daily?

A. I have.

Q. And in your observation of her did you frequently or at all see Mr. Sullivan there in her company?

A. Very often indeed, very, very, very often. He roomed there you know.

Q. You would see him going and coming daily?

A. Yes, sir.

Q. What, if anything, impressed you to believe there was some-

thing of a marriage or seriously contemplated between the two of them?

Mr. Howe: I object as leading.

A. Well, from the mere fact that they seemed so very, very fond of him, and their having their rooms vacated for his special use, and because they made every effort to make them homelike for him, and their general appearance and conversation, never outright, that they expected anything between them—that is, that they would be married—they never spoke of it, you know, but there were so many little things they would let drop, and he was in company with her so much, and she never had any other gentleman caller that I remember of in my life.

Q. During his illness was there anything that attracted your attention to her especially?

751 A. Well, that she was always very much grieved when he was worse and excited, and when he was better they were so overjoyed; that is all that I could say.

Cross-examination.

(Mr. Howe:)

Q. You say that you were very close friends with Miss Adrien?
A. Yes, sir.
Q. She had been boarding there for a long time?
A. She had been rooming there.
Q. Do you know what room rent she paid?
A. No, I do not.
Q. Do you know what board and room rent and tuition Mr. Sullivan paid?
A. I do not.
Q. Were you very intimate with Miss Carrau?
A. Well, as neighbors, yes.
Q. About how often you go to the house?
A. Sometimes two or three times a day.
Q. Were you there every day?
A. No, I could not say positively every day.
Q. Do you think you ever omitted a day going there?
A. I might have.
Q. Do you think you ever omitted a week?
A. No.
Q. It would be a rare thing for you to omit a day?
A. Well, I think so at that time, because my little boy was very ill, and I used her telephone to telephone to Dr. Horton almost every day. I may have missed some days and sometimes I have been there two or three times a day to get him over the 'phone.

752 Q. Now, please tell exactly what attention that you saw Mr. Sullivan pay to Miss Carrau was?

A. Well, I know that he took her out occasionally, and I know that he always spent his evenings at home with her, and they would sit on the veranda evenings and in the parlor as well, and he was always with her.

Q. Were you over there at that time?

A. Yes, sir, back and forth to use the telephone; the parlor door would be open and I would go in and out, but I never had occasion to speak to Mr. Sullivan.

Q. And Mr. Sullivan and Miss Carrau would be sitting in the parlor, would they not?

A. Yes, very likely.

Q. And they would be sitting on the veranda?

A. At times, yes.

Q. And that was the attention that Mr. Sullivan showed?

A. Well, I am sure that he paid her more attention.

Q. I want to get at what you saw—what did you see?

A. Well, I suppose that is the extent, then, of what I saw. But he would not have paid—he did not pay the others such attention.

Q. He did not sit on the porch with anyone else?

A. Oh, I have seen the others come out and join them.

Q. He did not sit in the parlor with anyone else?

A. Well, it might have been that they would come in there at different times.

Q. Sitting in the parlor and sitting on the porch with her is all that you saw, is it not?

753 A. Yes, that is all that I saw, and he would take her out.

Q. Did you see him take her out?

A. I have.

Q. Where did he take her to?

A. I am sure I do not know that.

Q. What you mean is that you saw them leave the house together, did you not?

A. Yes, sir.

Q. But where they went or what they did you do not know anything about it?

A. Certainly not.

Q. Now, who was the old lady sitting on the porch that day talking?

A. There was no lady sitting on the porch; they were standing by the gate by the street.

Q. Who was the old lady?

A. I do not know.

Q. Had you ever seen her before?

A. I do not remember that I ever had.

Q. Have you ever seen her since?

A. No, I cannot say that I have.

Q. Now, how far is the gate from the porch?

A. That would have to be measured, perhaps.

Q. From their porch?

A. From their porch—oh, not more than from here to the hall.
Q. About ten or fifteen feet?
A. That would not be fifteen feet.
Q. Ten or twelve feet?
A. Possibly.
Q. About how far was it from where you were standing?
754 A. Possibly two feet further, or three feet further, because our porch was very near to theirs, and our gates are very near together.
Q. Ten to thirteen feet?
A. Possibly.
Q. And the old lady was rather joking him?
A. Yes, sir.
Q. Was he joking in return?
A. No, he seemed to take it quite seriously.
Q. He was a rather serious man in his way, was he not?
A. I did not know the man at all.
Q. Now, was Mr. Sullivan standing in the street or within the gate?
A. He was standing just outside of the gate, and afterwards stepped in.
Q. Did the old lady go in?
A. She went on.
Q. She went on?
A. Yes, sir.
Q. Which way did she go?
A. Up Seventh.
Q. Were you standing on your porch?
A. No, sir, I was sitting on my porch.
Q. Now, give me as close as you can, Mrs. Seckler, the date when that occurred.
A. Well, it was some time in the very early part of—well, really, I could not remember. Either the latter part of August or the very first of September.
Q. The latter part of August or the first part of September, 1900?
A. Yes, sir.
Q. Now, was there anyone else in—within sight?
A. Well, I do not know that there was. I do not know
755 that there was not, I was more interested in watching my little boy, who was playing in the yard, than to the conversation, but that was so very near that I could not help hearing it.
Q. Were they speaking in whispers?
A. Oh, no.
Q. What sort of a tone were they speaking in?
A. In an ordinary tone of voice, or I could not have heard them.
Q. Did Mr. Sullivan and the old lady come up to the gate together?
A. They did; they were coming up from Pike street.
Q. Were you on your porch at that time?

A. Yes, sir.

Q. Then Mr. Sullivan came in the gate?

A. Yes, afterwards.

Q. Now, was he facing the house, or was he facing the street when this conversation took place?

A. Oh, dear, I could not say whether his face was turned against the house or not; I do not remember that.

Q. What I want to get at is as closely as you can remember?

A. No, I think she was facing me; she was not looking right at me, but her face was toward me, and he was more inclined, if I remember correctly, with his hand on the latch and looking at her. I do not think that he was facing me; I am sure not.

756 Q. Now, when the old lady and Mr. Sullivan came up to the gate they could have seen you very easily where you were on the porch, could they not?

A. Oh, yes, sir.

Q. And they were talking in such tones as you would easily overhear without making any effort?

A. Yes, sir.

Q. Now just repeat, please, again what the conversation was, and when you say what Mr. Sullivan said, use his language?

A. How can I remember his language?

Q. I want you to understand the question. Instead of saying that he said so and so, just give his language as closely as you can give it, and the old lady's language as closely as you can.

A. Well, the first remark that I heard was about how much she would like to go to Paris to the exposition, but for lack of means she could not go, for it took money—must I use her words?

Q. Yes.

A. It took so much money, and she did not have it, and he remarked that he had been there recently, but had not enjoyed his visit, because he was alone, and did not understand French, and then she joked him about coming there.

Q. What did she say?

A. Oh, I cannot remember that.

Q. As nearly as you can.

757 A. Well, she said, as near as I can remember, she told him it must be what he came there for; that he gave up his rooms and came there to live, and she asked if it was true that he was making his home there, and he said yes, and that he had come there for the purpose of learning French, and he expected to make a trip back there very soon, and she says: "Sure, you will not be going alone, then, I guess," and he said: "No, I do not know that I shall," or that he did not expect to go alone.

Q. What next?

A. Well, she told him that he had lived to be a pretty old man to think of matrimony.

Q. Did he state anything about matrimony at that time?

A. No, only that he said that he did not think that he would be

going alone. You cannot expect me to remember every little thing that they said, because I did not charge my memory with it. I am sorry I spoke of it at all. Any way, he said that he had lived to be a very old man, and she told him that he had waited pretty long, or was a pretty old man to think of matrimony. Well, he said he did not see why; he had lived a lonely life all of his life, and he had quite a little means; he had plenty of money, and if he wanted to take a companion—I think these were his words—for the rest of his life, he did not see why he should not do it. That was the extent of his conversation.

Q. Did the old lady say anything more?

A. She laughed at him. I cannot remember all the silly things that she said.

758 Q. What was one of the silly things?

A. Only she joked him—I think you are too mean, I think you are horrid.

Q. What was it that Mr. Sullivan answered?

A. I did not listen to any more; that is the extent of what I heard.

Q. Then did he come into the house?

A. Yes, sir.

Q. Did he see you standing on the porch?

A. I was not standing on the porch, sir; I was sitting on the porch, watching my boy play, and I could not help hear it.

Q. Did you say anything to Mr. Sullivan?

A. I did not say anything to Mr. Sullivan; I knew him well by sight, but I never spoke to him. I saw him in the house, but I never did have any conversation with him at all.

Q. Did Mr. Sullivan say to you that you had overheard him saying that he was going to get married?

A. It is not necessary to answer that. I told you that I did not have any conversation with him.

Q. And from that conversation you inferred that he intended to marry Miss Marie Carrau?

A. I certainly did, and I believed it before that, and I said to my husband that night, I said at dinner, I said: "Well, our suspicions are certainly confirmed."

759 Q. And that was because you had seen Mr. Sullivan in the parlor with Miss Carrau and because you had seen Mr. Sullivan on the porch, and because you had heard the conversation with the old lady; is that correct?

A. Well, no, not exactly that.

Q. Well, what else?

A. You could not see a gentleman, or have a gentleman, leave his rooms, or whatever he had for rooms, I do not know, but who would come to the house like that to make his home, and have them exert themselves so wonderfully to make him happy and contented, and make it homelike for him, and you had been told by them that he was coming there to make his home, had come to make his home,

and he seemed to have no other intention or idea, only to be there with them and with her, you would naturally think—anybody would have to be awfully dumb not to have their own opinion—you don't have to hear—anybody that has any eyes—she never had any gentlemen come there.

Q. Now, they had always had lady roomers there before that, had they?

A. Ever since I had known them. Miss Adrien, who had charge of the Seattle general hospital.

Q. Now suppose, as a matter of fact, that Mr. Sullivan was paying for board and tuition and lodging at five dollars a day, then you could understand the reason why?

A. He would not be very likely to do that.

Q. That would be one reason, would it not, why people would be inclined to make it very comfortable and homelike if they tried to?

760 Mr. HAYS: I object, as incompetent, irrelevant and immaterial, and not proper cross-examination.

A. Well, I think that all the trouble that they would do for that old gentleman would be worth five dollars a day, I really do, for they spared no means or pains to try to make him comfortable and happy.

Q. But I say, if, as a matter of fact, he was paying five dollars a day, that would be some reason for you to understand why they would try to make it comfortable and homelike—don't you think so?

A. Well, I don't know. They are not that kind of people, Mr. Howe.

Q. Now, you say you do not think that he was paying five dollars?

A. Oh, I say I don't know anything about it.

Q. Now, I want to get, just exactly, Mrs. Seckler, just exactly all of the things that you noticed, everything that you noticed, to make you think that he was engaged to Miss Carrau.

A. Well, I think I have told you everything.

Q. You have told me everything?

A. I think I have. I know that she was horribly distressed when he was ill, and I know that when he was better and they thought that he would recover, that she was in much better spirits, and I know that she was very, very devoted to him, giving all her time.

Q. What devotion did you see?

A. She spent her time with him.

761 Q. Now, how much time have you ever seen her spend?

A. I could not tell you that.

Q. Did she teach him the French language?

A. Yes, sir.

Q. That would necessitate her spending some time?

A. Yes, I presume so.

Q. You do not know how long the lessons took, do you?
A. I do not.
Q. And when they were sitting in the parlor, she might have been teaching him French lessons?
A. I hardly think so.
Q. But she did not teach him French on the porch?
A. Not likely.
Q. Now, you were not in there when the family was called in the night before Mr. Sullivan died?
A. No, sir.
Q. You say that Miss Carrau was very much distressed the first day that Mr. Sullivan was taken sick?
A. Yes, sir.
Q. You remember that occasion?
A. I do, distinctly, because they called me to come and prepare a mustard plaster while the physicians were there.
Q. Give me, as close as you can, what date that was?
A. I cannot do that.
Q. I mean as close as you can.
A. It is the early part of September; it must have been.
Q. About how early in September?
762 A. Oh, I could not tell you.
Q. I am not trying to catch you; I want to get at your best recollection on the subject.
A. Oh, perhaps the fourteenth or fifteenth or sixteenth. I could not tell you exactly, because—I have a record of my own at home that I could look it up, but I never thought to look it up.
Q. It is somewhere about the middle?
A. Yes, sir.
Q. Now, in what way did Miss Carrau show her distress then?
A. Why, by grief, by crying.
Q. Were any of the others crying?
A. No, they were very much excited and worried.
Q. Now, you were over there the day that Mr. Sullivan died?
A. I was in there soon afterwards. They called me at the time of his death, but I could not go, or, rather, when they discovered that he was dead, but I could not go.
Q. What time of the day was that?
A. He died early in the morning.
Q. What time of day was it that you were over there?
A. Probably an hour afterwards.
Q. What o'clock was it?
A. I cannot remember that.
Q. Well, just about?
A. I do not suppose more than nine or half-past ten.
Q. Now, did you go into Mr. Sullivan's room?
A. I did not; I never was in Mr. Sullivan's room.
Q. You say that you saw Miss Carrau that morning?
763 A. Yes, sir.

Q. And where did you see her?

A. Well, she was in the house; she just came out of the hallway when I went in there.

Q. Did she at that time show to you any paper which she said was Mr. Sullivan's will?

A. No, sir.

Q. Did any of them tell you that Mr. Sullivan had made a will the night before?

A. No, sir.

Q. When was the first occasion that you ever heard Miss Carrau, or any member of that family, claim that Mr. Sullivan had made a will?

A. Oh, I could not tell you that.

Q. About how many months after Mr. Sullivan's death?

A. I know that Mrs. Eames and I talked the will question over that morning.

Q. Not Mrs. Eames, but any member of that family.

A. They never spoke to me or at least it was some time afterwards?

Q. Now, Mrs. Eames and you talked over the will matter that morning?

A. Well, we felt how sad it was that he should die, and Mrs. Eames of course knew nothing about the will, and we wondered if he had left a will; that was all.

Q. Neither of you had, so far as you know, had any conversation with any member of the family about a will?

A. No, sir, never.

764 Q. Did you hear any member of that family at that time claim that all of Mr. Sullivan's property belonged to Miss Carrau?

A. No, not just then.

Q. Now, when did you first, Mrs. Seckler, talk with Mr. Hays in regard to this case?

A. Well, really, I cannot remember.

Q. I mean about?

A. I think it was some time last fall.

Q. Some time last fall?

A. I think so.

Q. Now, was it September or October?

A. I cannot tell you that.

Q. Well, about?

A. Well, I could not tell you, because I do not remember.

Q. Well, do you remember whether it was in September?

A. No, I think not.

Q. Do you remember whether it was in October?

A. Possibly it was.

Q. Now, you say the morning of Mr. Sullivan's death Miss Carrau was very much agitated?

A. Yes, sir.

Q. How long did you remain there?
A. Oh, just long enough to say a word or two and use the 'phone and run home.
Q. Was she at that time in what you would consider a very nervous and excited condition?
A. Well, she was certainly very much grieved; she could not answer me, she could not speak, she was so overcome with grief.
765 Q. And that, you think, was about nine o'clock?
A. It might have been later.
Q. Do you think it was about ten o'clock?
A. I think it must have been perhaps half-past nine or ten. I cannot tell you the exact hour.
Q. I want to know.
A. You will make me tell a story——
Q. I am not questioning your statements, you misunderstand me. Now, Mrs. Eames was there at the time?
A. At the time of his death?
Q. At the time when you were there?
A. No.
Q. And this conversation that you and Mrs. Eames had was afterwards?
A. It was after his death, certainly.
Q. I mean, was it the day of his death?
A. Yes, in the morning.
Q. But it was not while you were at the house?
A. No, she was at my back steps when the conversation took place.

SEATTLE, *March* 12, 1902—2:30 p. m.

Present: The master in chancery. Mr. Howe, for complainants. Mr. Hays, for defendants.

Mrs. E. SECKLER, on the stand for the purpose of correcting testimony heretofore given:

The MASTER: Upon hearing the deposition read, the wit-
766 ness, Mrs. Seckler, made a correction in the 19th line by having the word "temporarily" erased. This probably makes it necessary that further explanation be made.

(Mr. HAYS:)

Q. Was it the intention of Sullivan to make that his permanent residence?
A. Yes, sir.

Mr. HOWE: I move to strike the answer on the ground that the question was leading.

Q. Did you hear Mr. Sullivan use the word "permanently" in that conversation?

A. I cannot say that I did; I heard him say that he came there to make that his home.

Q. That is when he first went there he intended to make that his home?

A. Oh, yes.

Q. Right from the beginning?

A. Yes, sir.

Q. And when did you say that you thought that conversation took place?

A. It must have been the latter part of August or the first of September.

(Testimony of witness closed.)

(The witness and counsel waive the signing of the testimony given by the witness.)

Mr. W. B. JONES, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(Mr. HAYS:)

Q. What is your business?

A. Boots and shoes, salesman.

Q. You have been in that business how long?

A. Thirty years.

Q. Whereabouts are you in business?

767 A. I am with the Treen Shoe Company, on First avenue.

Q. You have been manager?

A. No, I have not. I am head of the men's side—salesman.

Q. Been there for a number of years?

A. Twelve or thirteen years.

Q. Were you acquainted with the deceased, John Sullivan?

A. I was.

Q. How long had you known him?

A. I think I had known him thirty-two years. I think it was thirty-two years ago when I first met him.

Q. Now, Mr. Jones, were you very well acquainted with him?

A. Very.

Q. Frequently converse with him?

A. As a boy, I bought candy and peanuts, and later on I bought powder and shot and things like that.

Q. What conversation, if any, did you have with Mr. Sullivan prior to his death, and after his return from a visit or trip through France?

A. I met him about six weeks prior to his death, I think it was, as near as I can recollect, and I got to talking with him in regard to his trip to France, and he said he enjoyed himself very much, and he intended from now on to spend about six months of every and each year in France, and said, "I intend to leave along about the first of October," I think he told me that time, or at least it would

be about six weeks after that, or a month. I think he died
768 just about a week or two after the time he set for him to leave for France—on or about the time that he was going to leave.

Q. Now, what else did he state to you in that conversation?

A. He said he enjoyed himself very much there, and he was going to enjoy himself now for the rest of his life; he intended spending about six months of the year, of each year.

Q. What did he say, if anything, about spending money?

A. Oh, he was, of course, going to spend money too. Yes, he did mention that he was going to spend money—of course, a person has got to do that; it generally costs money.

Q. Did he make any other remarks?

A. That is all that I can recollect at present. The conversation was not very long.

(Testimony of witness closed.)

Afternoon session.

Continuation of proceedings pursuant to adjournment.

Present: The master in chancery. Mr. Howe, counsel for complainant. Mr. Hays, counsel for the defendant.

ROBERT H. CALLIGAN, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(Mr. HAYS:)

Q. Where do you reside?

A. In Seattle.

Q. How long have you lived here?

769 A. I came here permanently in 1876.

Q. Were you acquainted with the deceased, John Sullivan?

A. Yes, sir.

Q. How long have you known him?

A. Well, I think I have known him since about 1870. I knew him before I came here to live.

Q. Where did you first know him?

A. Well, I came here backwards and forwards before I lived here.

Q. Did you see him at any time near or shortly prior to his death in the city of Seattle?

A. I saw him once after he returned from Europe.

Q. What conversation, if any, did you have with Mr. Sullivan?

A. Well, I will state just what transpired. I was going along in front of—on Front street and I saw him standing in the door of his building, in the entrance.

Q. Mr. Sullivan stood in the Sullivan block?

A. Mr. Sullivan stood in the Sullivan block and that is the first time that I saw him and I stepped up and shook hands with him.

Mr. Howe: Counsel for complainant objects to the conversation as incompetent, irrelevant and immaterial.

A. (Continuing:) And commenced to talk. I asked him how he found everything in the old country. Well, he says, "I was back to the spot where I was born, but I found no one belonging to me," and then he went on and he says, "By George! One thing I did enjoy," he says, "was my trip in Paris, but, he says, "the
770 greatest obstacle that I found was that I could not understand the people." "Well," I says, "You are able to travel now"—he says "The greatest obstacle that I found was that I could not understand the people." He says, "I am very sorry I could not talk French," "Well," I says, "John, you have plenty of time; why don't you learn to talk French." "Well," he says, "I have gone now to live with a French family; there are some young ladies in the family and they are going to teach me French." "Well," I says—now of course this is irrelevant but I will state why I said it.

Q. State it right out.

A. In the early days here we met a man that could talk Indian; we always used to accuse him of having slept with a dictionary, so I said, "John, why don't you get a French dictionary?" I say, "You are such a confirmed old bachelor that I don't suppose you would marry anybody." Well, "By George," he says, "we are never too old to change our minds," he says. That's all that I remember in connection with it in any way or shape.

Q. When was this conversation, as near as you can remember?

A. Well, I would say—I would not want to say positively, because I had no occasion to charge my mind with it, but I would say it was perhaps four or five weeks before he died, maybe only three weeks. It was sometime before he died. I thought then that I had not seen him for sometime and looked up the reports of
771 the matter, and then I found that he had not been sick long, and I kind of wondered I had not met him but once from the time that he came until he died.

Cross-examination.

(Mr. Howe:)

Q. Now, this conversation in regard to the advice that you gave him and his remark, you made that in a jocular way, did you not?

A. Yes, friendly, joking manner.

Q. You attached no importance to it?

A. I never thought of it; I would not have thought if I had not seen the controversy, I would not have ever thought of it.

Q. And the whole conversation was a matter that you then attached no importance to?

A. Not at all; just simply a joke.

Q. Now, of course you do not mean to say at this time that you have stated the exact words that Mr. Sullivan used, do you?

A. Well, no, with the exception of that part where he always used, "By George," I think I remember him saying that, and the necessity of learning the French language so that he might visit the country again. I may not have stated his exact words, but certainly that was the substance of that part of it.

Q. Now, did he say to you that he had had a fine time in France?

A. Yes, with that one exception, that was a great embarrassment.

772 Q. But outside of that he had had a very fine time and he wanted——

A. Yes, sir.

Q. And he wanted to go back?

A. Yes, sir.

Q. Well, did he say why he wanted to go back?

A. Well, I don't know that he said why, but I understood it he thought that if he could talk French he could have a better time. He wanted to go back again because there was pleasure there for him if he was fully qualified to appreciate it. That is what I would understand the substance to mean. I do not say what he meant, but that is the way that I took it and that is the conversation that we had.

Q. And about his visit to Ireland he simply said that he had not found anybody belonging to him?

A. That is it. No one belonging to me, I think is the very words that he used.

Redirect examination.

(Mr. HAYS:)

Q. Did he at any time state to you about his not having any relatives?

Mr. HOWE: I object as leading and incompetent.

A. No, I never talked of his family matters before that time, although we have sat and talked.

Q. Did his conversation with you and his expression that a man is never too old to change his mind, after his death, impress itself upon you as being earnest?

Mr. HOWE: I object as leading. The witness has already answered the question.

773 A. Well, now, after I heard of this controversy I really thought there might be something in it; that was all. That he might have been talking to that girl and I imagine that he thought over what he said to me, that he might have been leaning that way a little.

(Mr. HOWE:)

Q. But at the time the conversation took place you took it as a joke passing between you and himself, did you not?
A. Well, I did not lay any weight at all on it.
Q. But did you not think at that time that it was a joke—you meant what you said as a joke, did you not?
A. I did, of course.
Q. And you took his answer as a joke?
A. I would not make that remark to the old man unless it was in a joking way.
Q. And you took his answer to you as a joke, did you not?
A. Yes, I considered it—I would not consider it was any of my business what he intended to do, and would not ask a question that would lead up to it.
Q. Now, he was pretty shut-mouthed man, was he not?
A. Pretty close-mouthed man.
Q. You would not have approached him upon the subject of getting married, would you?
A. I would not if it had not come around just as it did in a joking way.

(Testimony of witness closed.)
(Signature of witness waived.)

774 HERMANCE CARRAU, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

(Mr. HAYS:)

Q. What relation, if any, are you to the defendant, Marie Carrau?
A. I am her sister.
Q. What is your age?
A. 29½.
Q. Whereabouts do you reside?
A. 1417 17th avenue.
Q. Seattle, Washington?
A. Seattle, Washington.
Q. Were you acquainted with the deceased, John Sullivan?
A. Yes, sir, I was acquainted with him.
Q. State when you became acquainted with him.
A. It was about the 31st of July that he came up the first time to our house.
Q. Out where you now live?
A. Yes, sir; 1417 17th avenue.
Q. State what took place after he came there, with reference to his boarding and so forth—tell just what he did?
A. Well, he took French lessons.
Q. Who gave him French lessons?
A. My sister, Marie.
Q. Go on.

A. He got board and room there; he had his breakfast and his dinner.

Q. At first?

A. At first that is, and it was the 1st day of August that he
775 came to take his board and his lessons and the week after that; it was the sixth that he took his room there.

Q. He did not at first get his room, till some few days after he was boarding there?

A. No, there was a lady there and she had the front room and Mr. Sullivan wanted the front room.

Q. Were you there at the time of Mr. Sullivan's death?

A. Yes, but not in his room.

Q. You were in the house?

A. Yes, sir, in the house.

Q. Were you there all the time, from the time that he became a boarder in your house to the time of his death?

A. All the time.

Q. When did he die?

A. He died on the 26th of September.

Q. What year?

A. 1900.

Q. Was he in the house at the time of his death? In this room?

A. Yes, in this room.

Q. State what occurred, if anything, prior to his death?

A. In the evening?

Q. Any time?

A. Well, about eleven o'clock, you know, the evening before, the night before he died, we were reading downstairs in the dining-room, and my sister, Mrs. Daussat, and my brother and I, we were reading, when my sister Marie called us from upstairs. She says, "Come up all of you, Mr. Sullivan wants to speak to you," and I says, "What is the matter?" and she says, "Oh, nothing, only Mr. Sullivan wants to speak with you." Then we ran upstairs,
776 the three, and when we got to Mr. Sullivan's room, then he told us that, "I will all my property and money, worth many thousand dollars, to be the property and money of your sister Marie Carrau. I am sick and of course I do not know what may happen—I don't know what might happen." That is all there was.

Q. Was your sister Marie present at that time?

A. Yes, sir, she was and near Mr. Sullivan.

Q. Was Mr. Sullivan lying down?

A. In his armchair.

Q. What robe or dress was he?

A. He had a bath robe, what they call a bath robe that belonged to my brother.

Q. And had your brother's bath robe on?

A. Yes, sir.

Q. No clothing but that?

A. The underwear, you know. A kind of a night gown, night shirt, calico, white.

Q. What was his condition at the time of speaking these words?

A. He was sick.

Q. Was he apparently in a sound mind?

A. Oh, yes, sir.

Q. Seemed to understand?

A. Oh, yes, very well.

Q. At the time that he spoke these words, you say that he was sick. What indications or signs, if any, did you observe about his condition of sickness?

777 A. Nothing more than everyday. He seemed to me about the same.

Q. Was he at that time, breathing easily or how, making any noise?

A. Oh, breathing very short.

Q. And seemed oppressed at that time?

A. Yes, sir.

Q. Who else was present at the time of the speaking of these words?

A. Well, my brother and my sister.

Q. What is his name?

A. Louis Daussat and Augustine Daussat, and my sister, Marie Carrau, and I.

Q. What did you do after he spoke these words to you?

A. Well, some one said, "Thank you, thank you," that is all. I said nothing. I felt like crying a little, you know. We went downstairs, and my brother, Louis Daussat, and my sister, Augustine Daussat, and I.

Q. What did Marie do?

A. She stayed there a little while, about five or seven minutes or something like that.

Q. Then who waited and attended Mr. Sullivan during his illness?

A. Doctor Carmen.

Q. Who waited upon him and nursed upon him?

A. My sister, Marie, all the time.

Q. What was his manner of treatment of your sister prior to his taking down sick, how did he conduct himself toward her

778 and how did they conduct themselves about the house—were they in conversation together much?

A. When he was sick?

Q. Before he took ill.

A. Oh, yes, they were always talking together.

Q. Did you hear any conversation between them at any time?

A. Yes, sir, I overheard them once.

Q. What was it that you heard?

Mr. Howe: I object as incompetent, irrelevant and immaterial.

A. It was about the first of September, I think I was busy in the dining-room about the table, and my sister and Mr. Sullivan were in the parlor, you know, and I was busy in the dining-room and I heard Mr. Sullivan say to my sister—this is all that I heard, "I have no relative, no one to leave——"

Q. No relative?

A. "No one to leave it to, and all I possess will be yours;" that is all that I heard.

Q. Did you hear the previous conversation or what they said before that?

A. No.

Q. Anything said before or after?

A. Just only that.

Q. They were in the parlor?

A. In the parlor.

Q. Miss Carraau, that night after you came downstairs, was there anything done, anything more said or done between you people?

A. No, only it was late and of course we all went to bed.

779 Q. Now, did you at any time reduce or did any one reduce these words to writing?

A. Yes, sir, my sister, I saw her writing something.

Q. When?

A. In the evening, after Mr. Sullivan spoke these words, she came downstairs.

Q. Did she write anything afterwards to your knowledge?

A. No.

Q. What did you do toward making or signing anything?

A. Oh, you mean the morning of his death?

Q. Any time.

A. Oh, yes, you know, when his body was taken away my sister came with a kind of a paper, and she says she wrote these words and she asked if that is it, if that is his own words, and then we signed it.

Q. You signed that?

A. Yes, sir.

Q. Is that the paper you signed? (Showing paper to witness.)

A. Yes, sir, that is it.

Q. Did you see the other signatures to this, did you see Augustine Daussat sign her name?

A. Yes, sir.

Q. Did you see Louis Daussat sign his name?

A. Yes, sir.

Q. These are their signatures?

A. Yes, sir.

Q. And that is your signature?

A. Yes, sir.

Q. At the time that Mr. Sullivan spoke these words, he was perfectly free to act, was he?

780 Mr. HOWE: I object as leading.

A. Yes, sir, perfectly.

(Signed) HERMANCE CARRAU.

[SEAL]

——— ———,

U. S. Master in Chancery.

Cross-examination.

(Mr. HOWE:)

Q. You are Miss Hermance Carrau, are you?

A. Yes, sir, I am.

Q. What were you doing in the dining-room when you overheard the conversation?

A. Reading.

Q. What were you reading?

A. A book from the library.

Q. What was the book?

A. Well, I don't know; I do not remember.

Q. What was the book about?

A. Oh, some story.

Q. What was the name of -t?

A. I do not remember it. I do not remember every book that I read so long.

Q. How do you know it was from the library?

A. Because I always read in the books——

Q. How often do you go to the library?

A. I do not go very often; my sisters go for me most of the time.

Q. Are you a great reader of the library?

A. Very great.

Q. You have a library card, have you not?

A. I have.

Q. But you have no recollection, however, what this book was?

A. No, I cannot.

781 Q. Was it a French book?

A. No, English.

Q. What time of day was it?

A. I think about eleven o'clock in the evening.

Q. Where was Mr. Sullivan and Miss Carrau?

A. Upstairs.

Q. I asked you when you overheard this conversation between Mr. Sullivan and Miss Carrau; what time was it?

A. It was, I think, half-past four, or between four and five because I am busy with the dining-room at that time, between four and five.

Q. What were you busy doing?

A. I was setting the table and busy with the things.

Q. And you were busy there setting the table and you overheard this conversation?

A. Yes, sir.

Q. And had you finished setting the table or were you then setting it?
A. No, I just began.
Q. Putting the knives and forks on the table and—was the table cloth on the table?
A. Yes, sir; it was.
Q. Putting the knives and forks on the table?
A. Not yet.
Q. Had not got that far?
A. Not so soon.
Q. What time did you have dinner?
A. Six o'clock.
Q. And you were setting the table for the six o'clock dinner?
A. Yes sir, I always begin early.
782 Q. Now, at that time, while you were setting the table, what were the words you overheard Mr. Sullivan say?
A. "I have no relative, no one to leave it to, and all I possess will be yours, all I possess will be yours." These are the words that I heard.
Q. Did he repeat it twice?
A. No.
Q. Just said that once?
A. Yes, sir.
Q. What did you do then?
A. I went and told my sister, Mrs. Augustine Daussat.
Q. What did you tell her?
A. I told her that I heard Mr. Sullivan say to Marie, "I have no relative, no one to leave it to, all I possess will be yours."
Q. What did you understand that to mean, what did you think he meant by that?
A. Why, I says, "He wants to give everything." I knew very well that they were going to marry, for some days between them——
Q. Do you know prior to that conversation that he wanted to marry her?
A. I guessed so after that.
Q. Had she told you anything?
A. No, nothing—yes, she told me he was courting her—she did not tell me, but we guessed.
Q. What made you guess?
A. His attention. Something was said sometimes at the table, you know.
783 Q. Well, what did you do after running in the kitchen, to tell your sister?
A. Well, I went back to the dining-room.
Q. What did you do then—finish setting the table?
A. Yes, sir, fixing things.
Q. Did you speak to Miss Carrau about the matter?
A. When?
Q. That day.

A. After dinner, yes. She spoke to me, she told me——
Q. What did she tell you?
A. She told me that Mr. Sullivan asked her to marry him.
Q. She told you that day?
A. Yes, sir, after dinner.
Q. Did she say whether or not she consented?
A. Yes, sir, she said that she asked him to give her one week to give her decision.
Q. Now, what day of the week was that?
A. When?
Q. When you heard this conversation?
A. It was the first of September.
Q. What day of the week was it?
A. It was Saturday, I think—was it not?
Q. She was to give her answer the following Saturday?
A. A week she asked.
Q. Now, when did John Sullivan first come to your house?
A. The thirty-first of July.
Q. Who went to the door?
784 A. My sister, Marie.
Q. Then where did he go?
A. Went to the parlor.
Q. Whom did he see?
A. Both my sister Marie and my sister, Augustine Daussat, and I; we were all there.
Q. And the terms on which he was to get board and lodging and tuition were agreed on at that time?
A. Yes, sir.
Q. What was the amount?
A. The amount was thirty-five dollars every week.
Q. Thirty-five dollars per week?
A. Yes, sir.
Q. Now, when did Mr. Sullivan die?
A. On the 26th of September.
Q. Are you sure of that?
A. I am sure.
Q. It was on the 26th of September?
A. Yes, sir.
Q. And when did you hear him say these words that you have spoken, of the will?
A. The evening before his death.
Q. At what time?
A. At about eleven o'clock.
Q. And where were you?
A. Downstairs when he said the words.
Q. No, where were you when you were called?
A. Downstairs, in the dining-room.
Q. Who else was in the room?

A. My sister, Augustine Daussat, and my brother Louis Daussat.

785 Q. Who called?

A. My sister, Marie.

Q. Did she come into the room?

A. No, she called from upstairs.

Q. What did she say?

A. She said, "Come up, all of you, up here, Mr. Sullivan wants to speak to you."

Q. Did she seem excited?

A. Not at all.

Q. Was she perfectly placid?

A. Oh, yes, maybe a little excited; I don't know.

Q. Did you go up at once?

A. Yes, sir, we ran up.

Q. You ran up?

A. Of course—I ran, just a little quick because maybe she needed us for something.

Q. And who spoke the first words, when you got into the room?

A. I think it was my brother, but I am not sure.

Q. What did he say?

A. He did not say nothing. Oh, he said, "What is the matter" and my sister said, she didn't know, "But Mr. Sullivan wants to speak to you."

Q. When you got into the room, who spoke first?

A. No one spoke; I do not think.

Q. Who said anything?

A. Nobody said anything.

Q. Did Mr. Sullivan say anything?

A. Oh, yes, Mr. Sullivan said, "I want you to remember and witness that all my property, that I will all my property and

786 personal effects, worth many thousand dollars, to be the property of your sister, Marie Carrau. I am sick and do not know what might happen."

Q. Now, was that said when you three got into the room?

A. Yes, sir.

Q. Where were you standing?

A. I do not remember where I was, you know.

Q. I mean about?

A. I was by Mr. Sullivan's side.

Q. Where was Madam Daussat?

A. She stood near me—I do not remember.

Q. Where was Louis Daussat standing?

A. Near my sister, maybe.

Q. Where was Miss Carrau standing?

A. I remember she was by Mr. Sullivan.

Q. Now, did Mr. Sullivan say these words after you took a seat?

A. We did not take a seat.

Q. You did not take a seat?
A. No.
Q. Just as soon as all of you got into the room he said that without saying anything else?
A. Oh, well, when we went in—no, we did not say anything.
Q. These were the only words he spoke?
A. Yes, sir.
Q. Now, you went right out of the room after that?
A. Yes, sir, we went downstairs.
Q. Who was it said "Thank you?"
A. I think it was my brother or my sister. I do not remember; I felt like crying a little.
787 Q. What was he thanking Mr. Sullivan for?
A. Because he said these words, I suppose.
Q. Now, did you understand that by these words, Mr. Sullivan was telling you that he had made a written will?
A. Yes, sir.
Q. And he was explaining what was in this written will?
A. So we supposed.
Q. You did not understand that he was making a will?
A. We thought that it was written.
Q. You thought he was telling you what was in that written will, is that it?
A. Yes, sir.
Q. Now, as soon as he spoke these words, you three went out of the room?
A. Yes, sir.
Q. Where did you go?
A. Down to the dining-room again.
Q. How long did you stay down there?
A. I think ten minutes, because my sister, when she came down, we sat three or four or five minutes, and then we went to bed.
Q. What did your sister do when she came down?
A. My sister she wrote something.
Q. What did she write?
A. I did not ask her.
Q. Did she go to the desk?
A. I do not know; I saw her when she was writing; yes, sir.
Q. What was she writing?
A. I do not know. She did not say at the time; she did not tell me.
Q. What was she writing with?
788 A. With a pencil.
Q. Writing on a piece of paper, was she?
A. Yes, sir.
Q. Did she tell you what she was writing?
A. No.
Q. How long did it take her to write it?
A. Oh, not very long; four or five minutes.

Q. Did she ever show you what she had written?
A. In the morning after, you know, but not that night.
Q. Not that night?
A. No.
Q. And the next morning did she show you what she had written?
A. Yes, sir, the paper she wrote the day he died.
Q. Is this the paper that she wrote?
A. Yes, sir.
Q. That is the paper that she wrote that night?
A. No—in the morning.
Q. That is the paper that she wrote in the morning?
A. Yes, sir.
Q. But did she ever show you the paper that she wrote that night?
A. No, sir; she showed the paper she wrote that morning.
Q. What has become of that paper, the paper that she wrote that night?
A. I do not know.
Q. When did you last see it?
A. Well, in the morning, I did not pay attention; I did not ask her about it.
789 Q. You have never seen it since that morning?
A. I do not think so.
Q. Now, when did you sign your name to that?
A. In the morning; I signed the one she wrote that morning.
Q. Now, Miss Carrau, did you know that you saw the next morning the paper that your sister had written the night before?
A. Why, I cannot tell; she read it out to me; I thought this was the one that she read to me.
Q. Now, how often have you ever read either of these papers, how many times have you read them?
A. I never read that, but my sister read it off to me once only before I signed it.
Q. You never have heard the paper read since the day you signed it?
A. No.
Q. And you never have read the paper yourself since the day you signed it?
A. No.
Q. What do you say was in the paper?
A. "I want you to remember and witness that I will all my property, both real and personal, to be the property of Marie Carrau. I am sick and I do not know what might happen."
Q. How often have you and your sister repeated these words to each other?
A. Never.
Q. Never.
A. I do not think so.

Q. How many times have you ever said these words over?
A. Never.
Q. Never until to-day?
790 A. No. I told Mr. Hays, of course.
Q. When did you tell Mr. Hays?
A. Oh, I cannot remember.
Q. About when?
A. It was, maybe, in October; I think so; I do not know. I do not know when.
Q. Now, how many times have you ever repeated to anyone the words that Mr. Sullivan said the night before he died?
A. I did not repeat them to Mr. Hays but once.
Q. Who else?
A. My sister.
Q. How many times?
A. Once when we went to see him.
Q. Went to see who?
A. Mr. Hays.
Q. Who else?
A. Augustine Daussat, my sister.
Q. How many times to her did you repeat the words?
A. Once.
Q. At the same time that you went to see Mr. Hays, or at different times?
A. No, we went all together.
Q. To see Mr. Hays?
A. Yes, sir.
Q. And was that the time that you repeated these words?
A. Yes, sir.
Q. Was that the only time?
A. Yes, sir.
Q. And how often did you read this paper?
A. I never read it myself.
Q. How often has your sister told you what the paper—had written in it?
A. Once, you know.
791 Q. When was that?
A. The morning of Mr. Sullivan's death.
Q. Outside of these times you have never heard these words spoken or read?
A. No.
Q. And you never have spoken these words except at the times that you mentioned?
A. Yes, sir.
Q. Now, when was it that you went with your sister to Mr. Hays, I mean about?
A. It was in October.
Q. In 1900?
A. Yes, sir, 1900.

Q. October, 1900?
A. Yes, sir.
Q. About what time in October?
A. Oh, it was late in the month, I think. I cannot remember.
Q. Who was present?
A. Mr. Hays, my sister, Marie, and my sister, Augustine Daussat, and my brother, Louis Daussat, and I.
Q. And did your sister tell Mr. Hays what she came for, what she called on him for?
A. Yes, sir.
Q. What did she say?
A. She saw him a little while before, she went down and then she went to get the will, the original and the copy, and then we went down, but she spoke to Mr. Hays before that.
Q. Was that at the time that you went with your sister, that was the time when she was carrying the original and the copy to Mr. Hays?
A. No, she came to get it, she went down the first time.
792 Q. She went down to see Mr. Hays first?
A. Yes, sir.
Q. You were not with her then?
A. No, I was not.
Q. Then she went back home to get the original and the copy?
A. Yes, sir.
Q. Then you went with her to see Mr. Hays?
A. Yes, sir.
Q. And your sister?
A. Yes, sir.
Q. And your brother went along with you, is that so?
A. Yes.
Q. Now, what did she say to Mr. Hays?
A. What she said before I do not know.
Q. What did she say at the time that you went with her?

Mr. HAYS: I object as incompetent, irrelevant and immaterial and improper.

A. Well, she told him that Mr. Sullivan died and that she was engaged to Mr. Sullivan, and she told him the words and gave him the copy and the original—I don't know what she said.
Q. What did Mr. Hays say?
A. Mr. Hays said, "That is a good will, that is as good a will as if written in words of fire."
Q. Do you know why she carried him both the original and the copy?
A. No.
Q. Did you see her make the copy?
A. Yes, sir.
Q. You saw her make the copy?
A. Yes, sir.

793 Q. Now, when she made the copy where was the original?
A. The original, I saw her make the original.
Q. Did you see her make the copy?
A. She told us, you know; I did not pay attention what she was writing because I was very busy at that time.
Q. When she showed you the copy what did she tell you?
A. Well, she read it and she says, "Do you remember these words—are these the words?" "Yes," we said, "these are the words," and then we signed it.
Q. And you remember the words exactly, do you?
A. Yes, sir.
Q. You know, do you not, that Mr. McCutcheon was your brother's lawyer?
A. Oh, well, I do not know very much about that business.
Q. You do know that he was your brother's lawyer, do you not?
A. Yes, I believe he was.
Q. You have been in Mr. McCutcheon's office, have you not?
A. No.
Q. You did not go to Mr. McCutcheon's office when your brother and sister went?
A. No.
Q. You don't know anything about that business?
A. No.
Q. Do you know how it was your sister came to sign a petition asking that Mr. McCutcheon should be appointed administrator.
A. No, I do not know.
794 Q. You do not know anything about that?
A. No, it did not interest me at all.
Q. It did not interest you that your sister was claiming that she owned all the property of Mr. Sullivan?
A. Well, I knew she signed but I did not know why she signed that.
Q. You did not know why your brother signed either did you?
A. I did not know.
Q. Were you in the room the day that Mr. Sullivan died, when Mrs. Eames came in?
A. After he died?
Q. Did she come in before he died or after he died?
A. After he died.
Q. Did she go up and feel his pulse?
A. Mrs. Eames?
Q. Yes.
A. Yes.
Q. What time of day was it that Mrs. Eames got there?
A. About after Mr. Sullivan died.
Q. About what time of day?
A. Between nine and ten.
Q. Who called Mrs. Eames?
A. I did.

Q. At that time Mr. Sullivan was dead?
A. Oh, yes, he was dead.
Q. Did you hear the conversation between your sister and Mrs. Eames about Mr. Sullivan?
A. No, I did not hear it.
Q. Did you ever hear your sister tell Mrs. Eames anything in regard to this will?
A. No.
Q. Did you ever hear her tell Mrs. Eames that she was engaged to Mr. Sullivan?
A. No, I did not.
795 Q. Now, when you went into the room in the morning, what time was it, the day that Mr. Sullivan died?
A. Before he died or after?
Q. Were you there before he died or after?
A. Yes, after he died.
Q. He was dead when you went in?
A. Yes, sir, he was dead.
Q. What time in the morning did you go there into his room?
A. About between nine and ten, it was about nine when he died.
Q. How did you find him?
A. My sister found him.
Q. When you first went into the room, where was Mr. Sullivan?
A. In his bed.
Q. What was his appearance?
A. Oh, he was dead.
Q. Did he have his spectacles on?
A. Yes, sir.
Q. Did he have the newspaper in his hand?
A. No.
Q. Where was the newspaper?
A. On the bed like that. (Showing.)
Q. Was he sitting up or lying down?
A. Lying down.
Q. Flat on his back or on his side?
A. No, on his side like that.
Q. Was his head on the pillow?
A. Yes, sir.
Q. He was not supported, not braced up, was he?
A. No, just like that. (Showing.)
796 Q. Could you tell us whether he had been sitting up?
A. Before he died?
Q. Yes.
A. No.
Q. You do not think so?
A. No.
Q. Now, did you go in with any breakfast for him?
A. Yes, sir, in the morning.
Q. What time?

A. Seven o'clock.
Q. Was he alive then?
A. Yes, sir.
Q. Did you ask him what he wanted for breakfast?
A. No, I carried the tray and I put it on the table and I went down stairs and my sister stayed there.
Q. What was on the tray?
A. Eggs.
Q. What else?
A. Boiled egg.
Q. What else?
A. I think a little jelly.
Q. What else?
A. Nothing else.
Q. Miss Carrau was in the room at that time?
A. Yes, sir.
Q. What time in the morning had she gone in there?
A. Oh, she had gone in there, she went back and forth, six or seven o'clock.
Q. Did you speak to Sullivan when you went in?
A. No.
Q. Was he awake?
A. No, he was in his bed like that. (Showing.)
Q. Was he sitting up at that time?
A. No.
Q. Lying down on his bed?
A. Lying down a little bit.
Q. Did he have anything to support him?
A. Yes, sir; a pillow, as far as I can remember.
797 Q. Did he speak to you?
A. No.
Q. Did he speak to your sister?
A. I did not stay long.
Q. When you went in?
A. I did not stay long. I put the tray on the table, and my sister took the tray like this, and I went downstairs.
Q. Then you did not go back into the room until between nine and ten?
A. Yes, when my sister called?
Q. When did you first learn that he was dead?
A. About nine o'clock.
Q. Who told you that he was dead?
A. My sister.
Q. Where were you at the time?
A. Down in the kitchen—no, I was in the dining-room.
Q. Did she come in the dining-room?
A. Oh, yes; I heard her running down and I opened the door, and she says, "I am afraid he is dead."
Q. Did your sister come running down?

A. Yes, sir.
Q. Now, Miss Carrau, did not she come downstairs to get some beef tea?
A. Yes, before.
Q. What time before?
A. Oh, I think it was—let me see; it must have been some time after eight before he died.
Q. Was it after eight?
798 A. No, it was a little before nine, and she went upstairs and she found him dead.
Q. And how long after she carried the beef tea up to him was it before she came and said that he was dead?
A. A few minutes.
Q. You were not there?
A. No, I was not up there.
Q. Then you did not see what she saw?
A. No, she told me afterwards.
Q. Now, how long was it?
A. Oh, maybe four or five minutes, three or four.
Q. Now, when Mr. Sullivan said these words that you have repeated, as being said on the night before he died, did you think that he was going to die?
A. No, I did not think so, no, I did not think that he was.
Q. Well, did you think that he was very sick?
A. Well, I did not know what I thought.
Q. There was a doctor right next door to you?
A. Yes, sir; Doctor Eames.
Q. You did not call in any doctor?
A. No.
Q. There was a telephone in your house, was there not?
A. Yes, sir.
Q. You did not ring up any doctor?
A. No, sir.
Q. You are a Roman Catholic, are you not?
A. Yes, sir.
Q. And you did not call in any priest?
A. Oh, no.
799 Q. You did not?
A. No, we did not.
Q. And next morning you say he was drowsy when you went into the bedroom?
A. He was kind of drowsy like that. (Showing.)
Q. Did he appear to be weak?
A. Well, yes.
Q. Was he very sick then?
A. Oh, he was like—I think he was kind of drowsy or asleep, but he did not say nothing.
Q. You did not call any doctor then?
A. No, the doctor was coming at half-past nine.

Q. You did not call in any neighbor?
A. No, not at that time.
Q. When was Mr. Sullivan taken sick?
A. He went to his room on the 18th of September.
Q. On taking the room on the 18th of September, did he ever leave the house up to the time of his death?
A. No, never.
Q. Did he undress on the 18th?
A. Yes, sir.
Q. And took to his bed?
A. Yes, sir.
Q. Did he ever put on his day clothes after the 18th of September?
A. No, never.
Q. You are positive of that?
A. Oh, I am sure of that.
Q. Did Mr. Sullivan, when he spoke those words the night before he died, as far as you could judge, have any dread of death?
A. I could not say. I suppose he thought maybe.
800 Q. From what you could see, do you think at that time, that he thought that he was in danger of dying?
A. Well, yes, I think so.
Q. You think so?
A. I think so.
Q. Why do you think so?
A. Well, nothing, only because he said these words.
Q. Did he appear to you to be very sick, any more than the afternoon.
A. Yes, sir.
Q. You think that although Mr. Sullivan at that time thought that he was about to die, that he did not ask anyone to call the doctor for him?
A. I do not know whether he thought that he was going to die, I did not know his mind.
Q. Well, you did not think that he was going to die?
A. Oh, no, of course, I did not.
Q. Mr. Sullivan was about sixty years of age?
A. I think so.
Q. How old is your sister?
A. My sister, Miss Marie?
Q. Yes.
A. She is twenty-seven.
Q. Now, after taking to his bed on the 18th, did Mr. Sullivan ever get out of bed again?
A. Oh, yes.
Q. And did he sit in his chair?
A. In his arm chair.
Q. How many times from the 18th until his death did the doctor visit him?

A. Every day.

Q. Every day?

801 A. Every day only the day before his death he did not come.

Q. He did not come the day before his death?

A. No.

Q. But with the exception of the day before his death——

A. On Sunday he did not come either.

Q. Well with the exception of Sunday? You mean every Sunday?

A. One Sunday.

Q. With the exception of Sunday; and the day before his death; the doctor visited him every day?

A. Every day.

Q. Now, did you know Mr. Sullivan prior to the night before he died, knew whether he was in danger of death?

A. No.

Q. You do not know?

A. No, I do not know.

Q. And you do not know whether he thought that he was in danger of death the night before he died, do you?

A. I do not know.

Q. But you did not think that he was in danger?

A. No, of course.

(Signed) HERMANCE CARRAU.

—— ——,

[SEAL.] *United States Master in Chancery.*

Redirect examination.

(Mr. HAYS:)

Q. In stating the times you and your sister and brother-in-law came to my office, you have endeavored to fix that time as being in the month of October?

802 A. I think so, although I do not remember. I could not tell, I do not remember at all.

Q. Now, as a matter of fact, did you not go as a witness as one of the witnesses when this will was probated; do you remember when that was?

A. When the will was probated?

Q. Yes.

A. Yes.

Q. Now, then, did you not tell these words?

A. Oh, yes; I think so.

Q. Now, then, when you answered Mr. Howe that you never repeated these words, you had a lapse of memory, did you not?

Mr. HOWE: I object as leading.

A. Yes, sir; of course.
Q. That was on the 8th of March?
A. On the 8th of March. I remember.
Q. So, as a matter of fact, the time that you called at my office in company with your sisters concerning the giving of your testimony must have been later than October, it must have been later than November.

Mr. Howe: I object as leading.

A. Oh, it was later, because I remember now, Mr. O'Brien had been appointed administrator.
Q. Now, then, you have stated to Mr. Howe, that you overheard—you stated on your direct examination that you overheard the part of a conversation in which Mr. Sullivan stated to Marie, on or about the first of September, 1900, something about his property, desiring that she should have all that he possessed.
803 A. Yes, sir.
Q. Now, at the time that you overheard that, were you reading this book that you speak about, or were you setting the table?
A. Setting the table. I was not reading at the time.
Q. You have stated in your direct examination you were engaged in reading a book?
A. I told Mr. Howe, when we went upstairs, when my sister called us. I was setting the table.
Q. You so stated, and now you do not mean it?
A. I was setting the table then?
Q. You were engaged in setting the table at the time that you overheard this conversation?
A. Yes, sir. How did he ask the question?
Q. I do not recollect. You mean to say that you overheard this conversation at the time that you were setting the table?
A. Yes, sir; I was setting the table.
Q. And when you were reading this book was the night when Mr. Sullivan caused Marie to call you upstairs?

Mr. Howe: I object as leading.

A. Yes sir; when my sister called us from upstairs the evening before his death.

(Mr. Howe:)

Q. What was the book that you were reading the night that your sister called you upstairs?
A. Oh, I don't know; I could not tell.
Q. You could not tell?
A. No.
Q. How big a book was it?

804 A. Oh, a library book, you know.

Q. But as to the name of the book or what the book was about, you have not the slightest recollection, have you?

A. No, I do not think.

Q. What is the last book that you have read?

A. "In the Middle of a Storm."

Q. What is the name of the book that you read before that one?

A. Before that one?

Q. Yes.

A. Oh, well, I don't know.

Q. What is the name of any book that you read in the last month?

A. I read "Through One Administration."

Q. Now; you have had five minutes to think of any book that you have read in the last month; what book have you read?

Mr. HAYS: I object to the question as being incompetent, irrelevant and immaterial, and also for the reason that the witness has answered the question that she cannot remember.

A. I cannot remember it.

Q. Can you name the name of a book that you have read in the last six months?

A. No, I cannot.

Q. Do all the books that you read come from the Seattle public library?

A. Yes, sir.

Q. And you have read so many books in the past six months, which came from the public library, that you cannot remember their names?

A. No, I do not want to remember them, either.

805 Q. You do not want to remember them?

A. No.

Q. So you say you have read so many books from the public library——

A. Yes, I read a good deal.

Q. That you read so many books in the last six months that you cannot remember the names of any one of them?

A. I do not want to, because it is not necessary.

Q. And you want it to be your answer that you cannot remember the books, because it is not necessary?

A. I do not want to remember anything about them.

Q. Now, the books that you get from the public library are got on your ticket at the public library, are they not?

A. Yes, sir; on my ticket.

Q. Has your sister got a ticket?

A. Yes, sir.

Q. Has your brother-in-law got a ticket?

A. No.

Q. Has Mrs. Daussat got a ticket?

A. Yes, sir.

Q. And the books that you have been reading have all been got on your ticket?

A. Yes, sir, of course.

Q. About how many do you think you have got on your ticket the last six months?

A. I do not know.

Q. About how many have you got in the past week?

A. I got one—Let me see——

806 Q. What was that?

A. "Through a Storm."

Q. Who is it by?

A. It is a very hard name.

Q. What is it about?

A. Through a storm, about a tragedy in the ocean.

Q. Now, what other book have you got in the past month?

A. How many?

—. ——.

Q. Oh, I don't know.

Q. What are the names of any of them?

A. I don't know. It is not necessary.

Q. Now, you say, Miss Carrau, that you cannot remember the name of one book that you have read in the past six months and you can remember the exact words that Mr. Sullivan spoke on the 25th day of September, 1900?

A. Because my memory—I repeated these words very often.

Q. Who did you repeat them to?

A. To myself, sometimes.

Q. Why would you repeat them?

A. Because I liked to.

Q. What was your object?

A. No object at all, to remember, to repeat again.

Q. What did you want to remember them for?

A. If I wanted to remember them—it is sometimes very nice to remember.

Q. Who told you to remember them?

A. Nobody.

Q. Who suggested to you to remember them?

A. Nobody.

807 Q. How many times have you repeated them to yourself?

A. Whenever they came to my mind?

Q. Yes.

A. I did not repeat but I know them very well.

Q. Now, how many times have they come into your mind?

A. Oh, I don't know.

Q. And how many times have you repeated them to anyone other than yourself?

A. I repeated them on the 8th of March once and once to Mr. Hays and then here.

Q. And these are the times in which you repeated the words?
A. Yes, sir.
Q. Now, when was Mr. O'Brien appointed administrator?
A. I think it was the 19th day of November.
Q. Now, did you see Mr. Hays before the 19th of November?
A. Maybe on the street sometimes.
Q. But did you go to his office?
A. No.
Q. What made you say then that you thought that it was in October that you and your sister went to his office?
A. Well, maybe I think it was—I remember very well, that was the time.
Q. Who told you when Mr. O'Brien was appointed.
A. I read it in the newspaper.
Q. When did you read it?
A. On the 19th of November, after he was appointed.
Q. On the 19th of November you read of his appointment, is that it?
A. Yes, sir
808 Q. How is that your memory is so good as to that date, how does your memory happen to be so good as to that date, why do you remember that date?
A. I do not know. I remember it.
Q. You do not know how you remember?
A. No.
Q. You just know you remember because you remember?
A. Yes, sir, and my sister Mrs. Daussat sometimes would say—they repeated it very often that he was appointed on the 19th of November.
Q. Now, how often has this matter of this will been talked over between you and your sisters and your brother-in-law?
A. Oh, I don't know, I could not tell.
Q. Well, about how many times?
A. Oh, I suppose sometimes.
Q. I mean about?
A. I could not tell.
Q. A dozen times?
A. Oh, I do not think so often.
Q. You think ten times?
A. Not so often.
Q. Six times?
A. Maybe six or seven; I cannot remember.
Q. Eight times?
A. No, I did not count them.
Q. No more than eight times?
A. I don't know, I could not tell.
Q. Do you think there were more than eight?
A. No, I could not tell, it is impossible for me to remember how many times.

809 Q. But you know it was not more than ten times, don't you?

A. No, I do not know.

Q. Do you know whether it is more than twenty times?

A. Maybe a hundred.

Q. It may be a hundred?

A. I don't know, I really don't know. I cannot remember how many times we talked about it.

Q. But you can remember the exact words that Mr. Sullivan said the exact order in which they came?

A. I remember.

(Signed) HERMANCE CARRAU.

(Testimony of witness closed.)

——— ———,

U. S. Master in Chancery.

The witness, Miss Hermance Carrau, having heard read her testimony as transcribed, and being now present for the purpose of correcting the same, the following proceedings were had and testimony taken:

MASTER IN CHANCERY: On page four hundred and seventy-nine of the record, line twenty-nine, in reading to Miss Hermance Carrau, she desired to make a change in her testimony, commencing with the question there, "Now, did you understand by these words, Mr. Sullivan was telling you that he had made a written will"? and her change was so radical that I did not feel like making it.

(Mr. HAYS:)

810 Q. Page four hundred and seventy-nine, line twenty-nine: "Q. Now, did you understand by these words Mr. Sullivan was telling you that he had made a written will? A. Yes, sir."

A. No, I thought it was the real one. It was this way——

Q. What did you understand by those words?

A. I understood that was his will.

Q. Then in the answer to the questions propounded to you by Mr. Howe throughout this deposition you want to be understood that you did not understand his words to be the words of a written will but the words of a will that he was then making?

A. Yes, that is the way I want it.

(Signed) HERMANCE CARRAU.

(Mr. HOWE:)

Q. Why do you want to change the word "leave" to "give"?

A. Because it was that Mr. Sullivan said to my sister. You know when Mr. Sullivan spoke to her, he says: "I will give you everything, everything will be yours"; and then when I say "leave" that would mean the same as "give" that is what I thought, but he says, "I will give you everything."

Q. That was your reflection?

A. That was my reflection.

Q. But now I want to know why you said "leave" when you were here before?

A. I say maybe when he speak about his relatives, you know, maybe the words "leave" come back to me at that time.

811 That is all I can explain, but when Mr. Sullivan says "All will be yours," he means "I will give you."

Q. But what I want to get at is just exactly what words Mr. Sullivan say?

A. Why, he say, "I have no relatives, no one to leave it to and everything I have will be yours," or "It will all be yours."

Q. That is what he said?

A. That is what he said.

Q. Now, you say you thought that when I asked you if Mrs. Eames felt Mr. Sullivan's pulse, you thought I said "purse"?

A. Yes, I think so; I thought so.

Q. That is what you thought?

A. Yes. Did you not see I was indignant and I say, "Who—Mrs. Eames?" The first thing that Mrs. Eames did when she came, she felt Mr. Sullivan's pulse, that I can say.

Q. Have you talked this matter over with anybody?

A. Nobody, no.

Q. Did you——

A. Oh, yes; when I came home I said to my sister, "I think I misunderstood something. They spoke about Mrs. Eames looking upon Mr. Sullivan's purse, and I think I must have misunderstood," and she says, "I do not know." But yesterday Miss Marie told me, "Do you know what they asked you? They asked you about the pulse." And I say "Oh," I say, "that is it." But I understood you to ask about Mr. Sullivan's purse.

812 Q. That is the only talking that you have done about this case, is it?

A. Because I say at the last——

Q. That is the only talking that you have done about this case since you gave your testimony?

A. Yes.

Q. Now, you say that when Mr. Sullivan said the words about eleven o'clock at night, when he called all of you to his room, you understood at that time that he was making his will?

A. Yes.

Q. You did not understand that he was telling you what was in a written will?

A. No, not at that time.

Q. You thought he was making his will?

A. Yes, at that time.

Q. Now, what time was it that you mean you understood he was making his will.

A. When he spoke those words.

Q. That was on the twenty-fifth of September, was it not?
A. Yes.
Q. At eleven o'clock at night?
A. Yes.
Q. Was that when you, Marie Carrau, Madam Daussat and Louis Daussat were in his room?
A. Yes.
Q. When did you first think that those words were in a written will?
A. When Father Sweere told us that that kind of will or oral will was no good in this State.
Q. Then you thought there must be a written will?
A. Yes.
Q. That was the first time?
A. Yes, that was the first time.
813 Q. That you thought there was a written will?
A. Yes.
Q. Up to that time you believed that what Mr. Sullivan said was his will?
A. Yes.
Q. And that he made it by saying those words?
A. Yes.
Q. Now, if you believed that Mr. Sullivan was making his will at that time of night, why did you not call in a doctor?
A. Because he did not ask for a doctor.
Q. Why did you not call in a priest?
A. Because he did not ask for a priest.
Q. You thought that he was a very sick man, did you not?
A. That is all I thought, that he was as sick as he was in the day. I did not see any change in him.
Q. You thought he was dying, did you not?
A. I hoped no.
Q. You thought he was dying, did you not?
A. Oh, no.
Q. You did not think so?
A. Oh, no, I did not think so.
Q. But you thought he was sick enough to be making his will at eleven o'clock at night, did you not?
A. Well, that we did not—we did not think about it very much only in the morning, for of course we thought it was his will, but we did not think very much about it.
Q. But at the time that he said the words you did not think that it was his will did you?
A. Yes.
Q. You did?
814 A. Yes. I think it was his will.
Q. And when you went out of the room did you say it was his will to anybody?
A. I do not think we speak about it—oh, no.

Q. Now, you remember signing the written paper the next morning?

A. Yes, very well.

Q. At that time did you think you were signing Mr. Sullivan's will?

A. Yes.

Q. That was the reason that you signed it, did you not?

A. Yes.

Q. And at that time you believed that written paper that you signed was his will?

A. Yes.

Q. And you meant to sign it as a witness to his will?

A. Yes, sir.

Q. Now, have you talked about this change in regard to its being Mr. Sullivan's will—have you talked with anybody about it?

A. No.

Q. Not with Marie?

A. No, not with Marie.

Q. Not with Madam Daussat?

A. No, we did not talk nothing.

Q. Not with Mr. Daussat?

A. No.

Q. But you just came in here voluntary to make this statement.

A. When Mr. Smith read it to me, I say, "I will change it."

Q. Who said so?

A. Me, myself. When Mr. Smith read it to me I say that.

Q. You said that you would change it?

815 A. Yes, I say, I will change it.

Q. What made you want to change it?

A. Because I misunderstood—when Father Sweere said there was no—the time was so short, when he said those words and when Father Sweere came home that I mix it up, you know, and I thought always you asked me since Father Sweere said those words it was no good, you know.

Q. You mix it up?

A. I mix it up. The time was so short you know, and we thought it was a good will when we signed it.

Q. Now did you talk with Mr. Hays about this?

A. No.

Q. Not with anybody?

A. Not a word.

Q. And you never talked even with Mr. Daussat about it?

A. No.

Q. Nobody suggested to you that you should make this change?

A. Nobody suggested to me.

(Signed) HERMANCE CARRAU.

Subscribed and sworn to before me this twenty-second day of March, 1902.

[SEAL.]

EBEN SMITH,
United States Master in Chancery, United States Examiner and Special Commissioner, etc.

816 Mrs. AUGUSTINE DAUSSAT, a witness called on behalf of the defendant, being duly sworn, testifies as follows:

(Mr. HAYS:)

Q. Where do you live?
A. In Seattle, here, 1417 17th avenue.
Q. You are the wife of whom?
A. Louis Daussat.
Q. What relation are you to Marie Carrau?
A. I am her sister.
Q. How long have you lived in your present residence?
A. Since the first of December, 1892.
Q. Where were you born?
A. Mignon, France.
Q. When did you first come to America?
A. In 1890.
Q. Who came with you?
A. My father and my two sisters.
Q. Were you then single or married?
A. I was then single.
Q. When you come to America?
A. Yes, sir.
Q. Where were you married?
A. Here in Seattle.
Q. Is your father living or dead?
A. No, he is dead.
Q. When did he die?
A. In 1893 in June.
Q. Were you acquainted with the deceased, John Sullivan?
A. Yes, sir I was.
Q. State what business relation you had with him.
A. He boarded and roomed in the house.
Q. Now, go ahead and tell about his coming to your house. For what purposes did he come?

817 A. He came in the house the first of August.
Q. The first of August?
A. Yes, sir. Before he came he made arrangements with us to come in the house the first of August.
Q. What did he come there for in the first place? What was his object in coming there?
A. To board and room and to get French lessons.
Q. Who was to give the lessons?

A. Marie Carrau.
Q. Your sister?
A. Yes, sir, my sister.
Q. Were you living there at the time that he resided there, after that time, all the time in the house?
A. Yes, sir.
Q. You saw, him did you, every day, from the time that he came to your house?
A. Every day, yes, sir.
Q. When did he die?
A. He died on the 26th of September.
Q. On the 26th of September?
A. Yes, sir.
Q. What time in the day?
A. Between eight and nine o'clock.
Q. In the morning?
A. Yes, sir.
Q. Now, what was his relation, if any, with your sister Marie?
A. He was engaged.
Q. He was engaged to be married?
A. Yes, sir.
Q. What occurred with reference to him the night before his death?

818 A. Well, he called us up about eleven o'clock in the night before his death. My sister was in the room upstairs. Marie was in the room upstairs, between eleven o'clock, and she called us, Marie called us and she says, "Mr. Sullivan wants to speak to you." We were in the sitting-room, my husband and my sister reading, and we ran upstairs, and then we came in the room and my husband says, "What is the matter?" we wanted to know, and there was Mr. Sullivan and he says, "I want you all to remember that I will all my business, my property, personal effects and money, to be the property and money of your sister, Marie Carrau. I am sick and I do not know what may happen."

Q. Then, what did you do then?
A. Well, we went downstairs and retired.
Q. Did your sister Marie go down stairs then?
A. No, not quite.
Q. What was his condition at that time as to being sick?
A. He was very sick, of course.
Q. How long had he been sick before that?
A. He took sick on the 19th of September.
Q. On the 19th?
A. Yes, sir.
Q. Well, how do you fix the date on the 19th of September?
A. Well, on Tuesday it was—it was on the 18th of September.
Q. That he took to his bed?
A. Yes, sir, that he took to his bed.
Q. Where was it that he spoke these words?

A. He was near the bed.

819 Q. Standing up or sitting down?

A. No, sitting down.

Q. Sitting in what, on the bed?

A. No, an armchair.

Q. Was he undressed or dressed?

A. He had on a bathrobe.

Q. And underclothes?

A. Yes, sir.

Q. He wore a night-shirt?

A. Of course, I could not see very much.

Q. Now at that time, did he appear to be very sick?

A. Well he was sick surely, he was breathing very heavily.

Q. Had he been breathing heavily before?

A. Yes, sir.

Q. For some time?

A. Yes, sir, for some time.

Q. His illness was of that nature that caused him to have heavy breathing?

A. Yes, sir, I could not say—that was the sickness.

Q. His sickness troubled him so that it was hard for him to breathe?

A. Yes, sir.

Q. It gave him difficult respiration?

A. Yes, sir.

Q. You then went downstairs, what did your sister Marie do?

A. My sister Marie did some writing downstairs.

Q. Did your sister Marie go down with you?

A. No, not right away.

Q. Who went downstairs with you?

A. My sister Hermance and my husband and myself.

820 Q. Now, Mrs. Daussat, when did Mr. Sullivan die with reference to these words, when, after that, did he die?

A. I did not see him myself——

Q. Who attended upon him, waited upon him, and nursed him?

A. My sister Marie.

Q. And you were not in his room again?

A. No.

Q. Until after his death?

A. Not myself.

Q. What did you do, after his death, with reference to these words that you have repeated?

A. Oh, we signed these words, my sister wrote them down the day before, I guess, I don't know, and the day that Mr. Sullivan died.

Q. The day of Mr. Sullivan's death?

A. Yes, sir; my sister wanted us to sign the words that he spoke.

Q. Did you sign the words that you all remembered to be the words that were stated?

Mr. Howe: I object as leading.

A. Yes, sir.

Q. Were you positive at the time that you signed them that they were the exact words stated by Mr. Sullivan?

A. Oh, yes, sir.

Q. Or were the substance of the words?

A. Yes, sir, certainly.

Q. Now, Mrs. Daussat, what time of day was this that you signed this?

A. Between eleven and twelve o'clock.

821 Q. Look at this paper and see whether this is the paper that you signed?

A. Yes, sir.

Q. Is that your signature there?

A. That is mine.

Q. Augustine Daussat?

A. Yes, sir.

Q. You signed that?

A. Yes, sir.

Q. Was Mr. Sullivan, at the time that he spoke these words, in his right mind?

A. Oh, yes, certainly.

Q. He seemed to be perfectly conscious?

Mr. HOWE: I object as leading.

A. Yes, sir, perfectly conscious.

Q. Was he perfectly free to act?

Mr. HOWE: I object as leading.

A. Perfectly free to act.

Q. No one used any force or influence upon him?

A. No, sir.

(Signed) AUGUSTINE DAUSSAT.

[SEAL] ——— ———,
U. S. Master in Chancery.

Cross-examination.

(Mr. HOWE:)

Q. Mrs. Daussat, in Mr. Sullivan's room there was paper and pen and ink, was there not?

A. I cannot remember whether there was or not.

Q. Did not he use to do his own writing there sometimes?

A. No, I do not think so. I do not remember anything of a pen.

Q. There were lead pencils in his room?

822 A. I cannot remember that, Mr. Howe. Because I did not take much care of the room myself.

Q. Now, what time of night was it that your sister called you?

A. Eleven o'clock.

Q. How do you know that it was eleven?
A. I know it was eleven o'clock.
Q. What makes you remember it was eleven o'clock?
A. Because we always go to bed about fifteen or twenty minutes after eleven.
Q. You go to bed about twenty minutes after eleven?
A. About fifteen or twenty, about that.
Q. And this was just before you were going to bed?
A. Yes, sir.
Q. Now, when you went downstairs, after Mr. Sullivan said the words, did you talk over this matter among yourselves?
A. Yes, sir, just a little bit, not a long time.
Q. Did you repeat the words among yourselves?
A. No, we did not repeat them.
Q. What was it you said?
A. Well, something about him, that he was very sick or some remark, I could not state what.
Q. You do not remember?
A. No, not exactly.
Q. Now, did you consider Mr. Sullivan very sick at that time?
A. Yes, sir, certainly.
Q. Did you think he was going to die?
A. Well, since he died, yes.
Q. But at that time did you think that he was going to die?
823 A. No, I did not think very much about that; I hoped not.
Q. Did you think that he was going to die, did you think that he was sick enough to die?
A. Oh, certainly.
Q. But you did not call in a doctor?
A. He did not ask for a doctor. He did not say, "I feel very sick or something of that kind."
Q. He did not say that he was sick?
A. He did not say that he was any more sick, he did not speak the words; he says, "I am sick," but he did not say "I am very sick."
Q. And you did not send for a doctor?
A. No, we did not.
Q. There was a doctor right next door?
A. No.
Q. Dr. Eames lived next door, did he not?
A. Yes, sir.
Q. You did not call for him?
A. No.
Q. You did not call for any doctor, did you?
A. No.
Q. You did not call for any priest, did you?
A. No.
Q. And there was a telephone in the house?

A. Yes. sir, but if he had said that he was more sick and wanted us to get a doctor or a priest, we would get it.

Q. You did not think that he was sick enough to send for a doctor, did you?

A. Well, he did not ask.

824 Q. And you did not think at that time that he was sick enough for you to send for a doctor, did you?

A. I did not understand that very well.

Q. You did not think that he was so much worse that you need send for a doctor, did you?

A. No, I did not.

Q. Now, how long after you had gone downstairs was it that Miss Marie came down?

A. Oh, a few minutes.

Q. What did she do first when she came down?

A. She went to writing.

Q. Did she go to the writing desk?

A. Yes, sir, to the writing desk.

Q. And did she take a piece of paper?

A. She took a piece of paper, of course, so I saw her writing.

Q. What did she write with?

A. I think it was a pencil or something.

Q. What kind of a pencil?

A. Oh, I cannot remember.

Q. Did it have a rubber on it?

A. I do not know.

Q. Was it a lead pencil?

A. I do not know.

Q. Was it a pen?

A. No, it was not a pen, it was a pencil.

Q. Did she tell you what she was writing?

A. No.

Q. Did she read what she had written?

825 A. No, not at that time.

Q. What did she do as soon as she was done writing?

A. Well, I do not remember very well. Of course, she went upstairs.

Q. Did she carry anything in her hands?

A. I do not remember.

Q. Did she carry the writing with her?

A. No.

Q. Did she put the writing in the desk?

A. No, I do not think; I do not remember.

Q. When did you next see that paper that she wrote?

A. The day after.

Q. Did you see that paper?

A. Yes, sir.

Q. Did you sign that paper?

A. Yes, sir. We signed the paper.

Q. And the paper that she wrote the night that these words were said?

A. The night before.

Q. The paper that she wrote the night that Mr. Sullivan spoke these words, was that the paper that you signed?

A. Yes, sir.

Q. And this is the paper, is it? (Showing paper.)

A. Yes, sir; that is the paper.

Q. And you signed that one?

A. The day that Mr. Sullivan died.

Q. The day of his death?

A. Yes, sir.

Q. That was the only paper that she wrote, was it?

A. Yes, sir.

Q. Now, just what were the words that Mr. Sullivan said when you went up into his room?

A. What were the words?

826 Q. Yes, sir.

A. "I want you to remember that I will all my property, personal effects and money to be the property and money of your sister, Marie Carrau. I am sick and nobody knows what may happen."

Q. How many times have you said these words over?

A. This is the last time.

Q. About how many times, what is the number of times?

A. I do not know. When we read them the day after we did not need to speak them again; we remembered that is all.

Q. Have you ever read that paper from that time to this?

A. No.

Q. Have you said those words many times?

A. No.

Q. How many times?

A. Never.

Q. How many times have you read them?

A. Never.

Q. Now, do you remember going with your sister to Mr. Hays' office?

A. Yes, I remember.

Q. When was that?

A. I guess it was about the first of December, something like that.

Q. About when?

A. About the first days of December.

Q. And who went with you?

A. My sister Marie and my husband.

Q. Why did all of you go down to Mr. Hays' office?

827 A. My sister went before to Mr. Hays' office.

Q. What did she go at that time for?

A. She wanted to consult him about the will.

Q. Now, did you understand when Mr. Sullivan spoke these words that night, did you understand that he was telling what was in his written will?

A. What is that?

Q. Did you understand at that time that he was telling you people what his will was, that that was a written will?

A. Repeat that again.

Q. Did you understand that Mr. Sullivan, when he spoke these words, wanted you to understand that he had made a will, a written will, with these words in it?

A. Yes, of course, I guess so.

Q. That is what you understood?

A. Yes, I guess so.

Q. Now, guess, but is that what you understood?

A. Yes.

Q. And he was telling you what his will contained?

A. Yes, sir. We thought that the will was made.

Q. And you were surprised when the written will was not found?

A. Yes, sir.

Q. You did not understand at that time that he was making his will, did you?

A. No, we thought always that there was a written will.

Q. You thought that the will had been made before that?

A. Yes, sir.

828 Q. And that he was then telling you what was in that will?

A. Yes, sir.

Q. Now, after Mr. Sullivan took sick and took to his bed, on the 18th of September, did he ever leave the house after that?

A. No.

Q. He stayed in the house until his death?

A. Yes, sir.

Q. Are you positive of that?

A. Oh, positive of that, yes.

Q. How often did the doctor visit him?

A. Well, he came the first day, I am not sure, but I remember he came the first day and Wednesday, and then Thursday, I am not quite sure that he came.

Q. Was he there the day of his death?

A. No.

Q. Was he there on Sunday?

A. No, not Sunday.

Q. Do you know how your sister came to consult Mr. Hays?

A. Well, my husband went and met him, and she had taught——

Q. Mr. McCutcheon was your husband's lawyer, was he not?

A. Yes, sir.

Q. He had been your husband's lawyer for several years?

A. Two years, I guess.

Q. Two years before Mr. Sullivan's death?

A. Yes, sir. About two years before, I guess.

Q. And your sister and your brother had been down to Mr. McCutcheon's office, had they not?

A. My sister was down town and she went to the restau-
829 rant, at my husband's place of business, and my husband said to her, "Do you want to go with me to Mr. McCutcheon's office; he wants us? He wants to be appointed administrator—will you come?" "I don't know," she says. "If you want me I will," and she went there.

Q. You were not with her on that occasion?

A. No, I was not with her.

Q. Now, how do you know that your sister was engaged to Mr. Sullivan?

A. My sister told me—I understood it before that, too.

Q. But outside of her telling you, you did not know about it yourself, did you?

A. I did not know anything at all about it.

Q. You knew that she told you that?

A. She told me that about the first of September. She asked if she should marry him.

Q. Did she tell you that?

A. She did not tell me about the time herself, but my sister came to the kitchen; she overheard.

Q. Where were you?

A. I was in the kitchen.

Q. And did your sister tell you that Mr. Sullivan had asked Miss Marie to be his wife?

A. Yes, sir.

Q. Did she tell you that she had heard Mr. Sullivan ask your sister to be his wife?

A. Yes, sir.

Q. What words did she use?

830 A. I don't know. She came in the kitchen and she says, "You know what we guessed is the truth about Marie to be his wife."

Q. What did she say that she heard Mr. Sullivan say to your sister?

A. She heard him say especially, "I want to give everything that I have for you; I have no relatives at all, and everything that I have will be yours."

Q. Did she tell you that she heard Sullivan ask her to be his wife?

A. I do not remember just the words—yes, I think so.

Q. Now, when did your sister Marie first tell you that she was engaged to John Sullivan?

A. She told me that he asked her first, but she would not answer right away.

Q. Did she tell you the week after?

A. No, she told me before, but she would give her answer the week after.

Q. Did she tell you the day that she gave him her answer?
A. Yes, sir; she did.
Q. Now, did your sister go to church regularly?
A. Yes, sir.
Q. Did Mr. Sullivan go to church?
A. No.
Q. They were both Catholics?
A. Yes, sir; they were both Catholics.
Q. You never saw any presents that Mr. Sullivan gave your sister?
A. No.
Q. He never did give any presents?
A. No, he did not.
831 Q. He never wrote her any letters?
A. No.
Q. He never gave her an engagement ring?
A. No, he wanted to buy it in Paris.
Q. But he never gave her an engagement ring?
A. No.
Q. When was he to be married?
A. The first of October.
Q. How do you know that?
A. Because she told me.
Q. Who told you?
A. My sister.
Q. When did she tell you that?
A. Because she told me when they intended to be married. She said they were to be married the first of October, that is all.
Q. And how much of a trousseau did your sister prepare to get married?
A. Oh, little things; and she was going to buy a traveling dress, that is all.
Q. But she had not made any preparations in that direction, had she?
A. She began to make preparations when he took sick.
Q. When did she begin?
A. Right after; she could not do very much, because he took sick right away.
Q. But she intended to buy that in Paris, did she not?
A. Everything, or almost everything, yes.
Q. And she only intended to buy a traveling dress here was that it?
A. Yes, sir.
832 Q. How old a man was Mr. Sullivan?
A. Well, I cannot tell very well; seemed to be about sixty-five.
Q. How old is your sister?
A. Twenty-seven.
Q. When you went into Mr. Sullivan's room the night that you were called there, who spoke first—Mr. Sullivan or one of you?

A. Maybe my husband says—I don't remember I think he says, "What is the matter?"

Q. And what did he say?

A. Mr. Sullivan?

Q. Yes.

A. "I want you to remember that I will all my property and personal effects and money, to be the property and the money of your sister, Marie Carrau." And pointing to her.

Q. Anything else?

A. "I am sick, and we do not know what may happen," or something of that kind.

Q. Now, did he say anything else?

A. No, nothing else.

Q. What did you do after he said these words?

A. Well, we went downstairs right away. He did not say any more.

Q. That was all that took place?

A. Yes, sir; all that took place.

Q. How many times have you and your sister talked this matter over?

A. Oh, never, any more.

Q. You never talked it over again?

833 A. No, not afterwards. We talked it over about the will.

Q. How often have you and your sisters said these words over to each other?

A. Not any more, I guess.

Q. How many times do you think you have said them?

A. Never.

Q. Never?

A. No, never.

Q. Did you ever tell Mr. Hays that you were going to testify to?

A. No.

Q. And before you came in here to give your testimony, did he ever know what you were going to testify to?

A. No.

Q. And he put you here as a witness not knowing what you were going to say?

A. He did not know what I was going to say.

Q. You never told him what you were going to say?

A. No.

Q. Do you know whether your sisters told him what they were going to say?

A. I do not know; I do not think so.

Q. Now, the only reason that you thought that Mr. Sullivan had made a written will was from what he said that night that you were called in there, was it?

A. No—he says so many times, and we repeat——

Q. But what he said that night was what you thought was a written will, was it?

A. Yes, sir.

834 Q. You did not think that he meant that those words that he was then speaking was his will?

A. No, I did not.

(Signed) AUGUSTINE DAUSSAT.

[SEAL.] —— ——,
U. S. Master in Chancery.

Redirect examination.

(Mr. HAYS:)

Q. Mrs. Daussat, when you answered Mr. Howe that you had not told me what you were going to testify to, you did not mean to tell Mr. Howe that you had never told me what you knew about this case?

Mr. HOWE: I object as leading.

A. Certainly not.

Q. You told me, you fully stated to me your knowledge of this case, have you not?

Mr. HOWE: I object as leading.

Q. But you did not tell me what you would testify to on the trial?

Mr. HOWE: I object as leading.

A. No.

Q. You have answered Mr. Howe that you never have stated these words to anybody else. Now, you remembered you testified as a witness in the probating of the will. Have you forgot about having testified these same words, or substantially these words in the superior court?

A. Oh, yes, I remember I did.

Q. You want to correct that then, you are mistaken?

A. I did not understand the question very well. I repeated that in the court; yes.

835 Q. Then, as a matter of fact, you have spoken these words both in the superior court before this, and then you have repeated these words over to me, what you heard that night, and have stated these words again today.

A. I don't understand you.

Q. Have you talked over these words among yourselves? You and your sisters and brothers, as to what Mr. Sullivan said, have you talked it over among yourselves?

A. Yes, sir; sometimes. When the thing was over, the day after.

Q. Since then you have talked about the case and discussed it among each other?

A. Yes, sometimes we have talked.
Q. Since then you have discussed the incident of his death?
A. Yes, sir.
Q. Do you understand my language?
A. I don't understand you very well.
Q. Your memory of what was spoken about that night is very good, from the fact that they were words that you were requested to remember—is that the reason that you remember?

Mr. HOWE: I object as leading.

A. Yes, sir.
Q. And because you knew that these words, you learned later that this was a will——

836 Mr. HOWE: I object as leading.

A. Yes, sir.

(Signed) AUGUSTINE DAUSSAT.

[SEAL.] ——— ———,
U. S. Master in Chancery.

(Mr. HOWE:)

Q. Mrs. Daussat, if you had not learned that this was a will you would have forgotten these words, would you?
A. Well, it is not very easy to forgot the words.
Q. What makes you remember them so well?
A. Well, of course, Mr. Sullivan—I says, many times, "It was very sad we cannot find a will;" of course I got them on my mind.
Q. What makes them on your mind?
A. Because I was thinking about that will, always.
Q. You were very much disappointed when the written will was not found?
A. Yes, I was, certainly, for my sisters.
Q. You all thought there was a written will?
A. Yes, sir.
Q. When you found there was not a written will then you impressed these words on your memory, did you not?
A. Yes, sir.

(Mr. HOWE:)

Q. You had these words on your memory before you discovered there was no written will, did you not?

Mr. HOWE: I object as leading.

Q. I say, you knew these words long before you knew that they did not find any written will?
837 A. Certainly.

At this time further proceedings were adjourned until to-morrow morning at eleven o'clock.

(Signed) AUGUSTINE DAUSSAT.

Read over to witness by me, by her subscribed in my presence, and by her sworn to before me this 21st day of March, A. D. 1902.

[SEAL.] EBEN SMITH,
As United States Master in Chancery and Examiner and Special Commissioner.

SEATTLE, 2 P. M., FRIDAY, *March* 21, 1902.

Present: The master in chancery. Mr. Howe. Mr. Hays.

The witness, Mrs. AUGUSTINE DAUSSAT, having heard read her testimony as transcribed, and being now present for the purpose of correcting the same, the following proceedings were had and testimony taken:

MASTER IN CHANCERY: Mrs. Daussat this morning spoke about making a correction about the written will, but she signed her testimony.

(Mr. HAYS:)

Q. Is this what you wanted to correct on page 514, line 15: "Q. Did you understand that Mr. Sullivan, when he spoke these words, wanted you to understand that he had made a will, a written will, with those words in it?" Your answer is, "Yes, of course, I guess so." That is what you wanted to correct, is it?

838 A. Yes, sir, that is all I want to correct is right there.

Q. Now, what is the fact about that?

A. Well, when Mr. Sullivan said those words we thought that was the will.

Q. That was?

A. That was the real will, yes, sir.

Q. That that was his real will?

A. Yes.

Q. You did not understand anything about any other will?

A. No, no.

Q. Now what other correction is there?

A. That is all.

(Mr. HOWE:)

Q. Mr. Smith read over this testimony to you, did he not?

A. Yes, sir, he did.

Q. When?

A. This morning.

Q. And you signed it, did you not?

A. Yes, I signed it.

Q. And now after signing it you want to make the change which you have just made; is that correct?

A. I told Mr. Smith that this was something not correct because there was something there, but it was very like what I said.

Q. But you thought it did not sound like what you said?
A. Yes, that is what I think.

Mr. HAYS: Now, let me interrupt. Judge Smith indicated in the margin opposite this question that it was to be changed.

Mr. HOWE: I will bring that out.

839 Mr. HAYS: Oh, yes. but I don't want it to appear that it is a recent discovery of hers after signing it.

Q. Now, when he read it over to you, did you at that time say to him you wanted to change that?
A. Well, I said to him like this, "I would make some change in there."
Q. Well, what change did you tell him?
A. Because I know when Mr. Sullivan speak those words the day after we thought it was a good will, but after Father Sweere thought it was no good, that was another thing, then I——
Q. You must not go so fast.
A. When Mr. Sullivan spoke of this will, the day after when he was dead, I thought really it was a good will, but Father Sweere says it was no good; since that time we thought it was not right.
Q. Now, Mrs. Daussat, since you gave your testimony here the other day, have you talked this matter over with anybody?
A. No, no, no, no, Mr. Howe.
Q. Have you talked it over at home?
A. No, Mr. Howe, no.
Q. Have you not talked it over with Mr. Hays?
A. No, no.
Q. Have you not talked it over with your husband?
A. No, we have not, no.
Q. You have not talked it over with anybody?
A. No, not with anybody.

840 Q. Now, you want to be understood as stating that when Mr. Sullivan said those words you thought he was making his will; is that correct?

A. Yes.
Q. You did not think at that time that he was telling you what was in a written will?
A. No, no.
Q. You thought he was making a will, it was his will.
—. ——.
Q. And you thought that he wanted you people there to be witnesses to a will that he was then making?
A. Yes, sir.
Q. Is that the way you want to be understood?
A. Yes.
Q. Why did you testify, when you testified before, that you thought Mr. Sullivan was telling you what was in the written will?
A. Well, I tell you I think I mixed it up.
Q. You think you mixed it up?

A. Yes, because Father Sweere came—after Mr. Sullivan died, Father Sweere came to my sister Marie and we thought that will was no good, so I mixed it up, and then I always after that think about the written will, after Father Sweere came.

Q. The first time, then, that you thought that Mr. Sullvan had made a written will, was after Father Sweere said that an oral will was no good?

A. Yes.

Q. But up to that time you thought that what Mr. Sullivan said was a good will—a good oral will.

A. Yes.

Q. That when you heard him say these words at about
841 eleven o'clock at night you understood he was then making a will?

A. A will.

Q. Now, when you signed the written paper the day Mr. Sullivan died, did you think you were signing his will?

A. Yes.

Q. That is the reason you signed, did you?

A. We signed that document.

Q. Well, you thought you were signing his will?

A. His will, yes.

Q. And you thought that Miss Marie put it in writing because it was his will?

A. Because it was his will.

Q. And the reason you signed it was you thought that was his will, is it?

A. Yes, his will, yes.

Q. Now, you have not talked this matter over with Mr. Daussat at all?

A. No, no.

Q. Have you not said a word to him about it?

A. No, no, no.

Q. You have not said a word to anybody?

A. No, no, never said a word; no.

Q. And you and your sisters have not talked it over?

A. No, nothing at all.

Q. Now, when you went home, have any of you talked to each other about this case?

A. When we went home, when?

Q. Any time since you have been here the last time?

A. No, no, no.

Q. You are sure?

A. A very little about that.

Q. A very little about that?

842 A. Oh, maybe a few words; I do not know.

Q. But about this change in your testimony?

A. No, no, no, nothing about the change.

Q. You have not said a word?

A. No, not a word about the change, no, no, no.

Q. You have not said to any of them that you made a mistake about giving your testimony?

A. No.

Q. And that you wanted to change it?

A. No, no.

Q. And none of them has said to you that you made a mistake?

A. Oh, no.

Q. And Mr. Daussat did not say that you made a mistake?

A. No, no.

Q. And did not talk with you about it?

A. No.

Q. Now, when Mr. Smith read this testimony over to you did you tell him then that you wanted to change it as you have now changed it?

A. Yes, I made the statement I did want to change it some—I talked to Mr. Smith that I want to change it something in that.

Q. What is that?

A. I talked to Mr. Smith that by going to change something in that, but I did not go far because I no make him understand me very well.

Q. Now, you signed it without his changing it, did you not?

A. That I would have this change made there.

Q. I say you signed it, did you not, without his changing it?

A. Yes, I sign it.

Q. You knew it was not changed, did you not?

843 A. Well, I knew there was something I wanted—I want to change something, yes, oh, yes.

Q. Did you know how you wanted to change it?

A. Yes, I know I want to change it because——

Q. Did you tell Mr. Smith how you wanted to change it?

A. No, I did not tell him how I wanted to change it. I says, "There is something in there to be changed."

Q. Why did you sign it before it was changed?

A. When did I sign?

Q. Why did you sign it?

A. Well, I sign it because I could not make him understand me well. You know I was not used to him, you know, and I could not tell very well.

Q. And after signing it you have not talked with anybody about making the change?

A. No.

Q. Did you talk to Mr. Hays?

A. Oh, no; I did not see him this morning at all.

Q. Did you talk with anybody else about it?

A. Nobody else, no.

Q. How did you come then when you came in this time, how did you come to make the change?

A. Because it did not sound very well in my mind what I mean.

(Mr. HAYS:)

Q. You understood when this deposition was read over to you that it was simply for the purpose of finding out whether a change or correction or change was necessary?

A. Yes.

Q. And that you would have the opportunity afterwards
844 to make any correction that you desired and when you went out you supposed of course you would have a right to make this correction?

A. Yes.

(Signed) AUGUSTINE DAUSSAT.

Read to the witness by me and by her corrected and after corrections and examination by the solicitors of the respective parties by her, subscribed and sworn to — me this twenty-second day of March, A. D. 1902.

[SEAL.]

EBEN SMITH,
United States Master in Chancery and Special Commissioner, etc.

Complainant's Rebuttal.

Reverend F. X. PREFONTAINE, a witness called on behalf of the complainant, testified in rebuttal after being duly sworn *testified* as follows:

(Mr. HOWE:)

Q. Father Prefontaine, what is your name?
A. My name is Francis Xadier Prefontaine.
Q. How long have you resided in Seattle?
Q. *How long have you -esided in Seattle?*
A. I came here in 1867.
Q. And what is your profession?
A. I am a Catholic priest.
Q. How long have you been a Catholic priest?
A. Well, I was made a Catholic priest in 1863.

Q. What parish have you in Seattle?
845 A. The parish of Our Lady of Good Help.

Q. Did John Sullivan attend the church of which you are the priest?

A. He was holding a pew in my church for many years.
Q. But not a very regular man in his attendance?
A. No.
Q. Did you hold the funeral services over John Sullivan?
A. I did.
Q. Where was he buried?
A. In Calvary cemetery.

Q. Did you come back on the train which brought Miss Carrau and her sisters and Mr. Daussat?

A. I came on the same train.

Q. Did you sit in their immediate vicinity?

A. As they seemed to be strangers and in grief I went and sat with them in the same row—that is, on the same side with Mr. Daussat, I believe, and Miss Carrau were right in front of me, I believe.

Q. Did you and Mr. Daussat have any conversation in regard to Mr. Sullivan?

A. Yes, sir.

Q. What was that?

A. Well, I asked Mr. Daussat if he thought that Mr. Sullivan had left a will, and he said yes, think he has and he says, "I think he must have left something for you because he often said that he would not forget Father Prefontaine."

Q. That was on the train coming back from John Sullivan's funeral?

846 A. That was on the train coming back from John Sullivan's funeral.

Q. How long have you known John Sullivan?

A. Oh, I could not say just now the exact number of years, but I was acquainted with him from the time that he arrived here in Seattle. He had kept a little fruit stand here on Commercial street—they used to call it Commercial street; it is First avenue now.

Q. Was your acqnaintance with him in any degree an intimate one?

A. Oh, yes, we were friendly always.

Q. Had he ever contributed to your church?

A. Yes, in any collections taken up or any improvements or anything like that for the church he would always contribute his share.

Cross-examination.

(Mr. HAYS:)

Q. Do you know, Father Prefontaine, whether or not Mr. Sullivan did remember you in his will?

A. I do not know anything about it.

Q. You have not been advised of any remembrance?

A. No.

Q. Were you expecting any recognition?

A. Well, I said to myself, if there is a will, Mr. Sullivan will certainly do something for the church—not for me individually, but for the church.

Q. For the church. And when you learned that he did not do anything for the church you were disappointed, naturally?

847 A. Well, when I heard that he had not left a will of course I was not disappointed, because then I came to the conclusion that Mr. Sullivan had died suddenly and did not make a will.

(Testimony of witness closed.)

Mr. JOHN CUNNINGHAM, a witness called on behalf of the complainant, testified in rebuttal as follows:

(Mr. HOWE:)

Q. Where do you reside?
A. At 310 Sixth avenue north.
Q. How long have you lived in Seattle?
A. In the city proper?
Q. Yes.
A. About thirty-one years.
Q. How long have you lived in the country?
A. The same time.
Q. What was your business?
A. My business is a common roustabout. I worked for the Seattle Coal and Transportation Company in their department for about seven years, and then they transferred the property to Villard and it came into the hands of the Oregon Improvement Company.
Q. Are you doing any business now?
A. No, sir.
Q. Do you live in your own home?
A. Yes, sir.
Q. Did you know John Sullivan who was the owner of the Sullivan building in his lifetime?
A. Yes, sir.

Q. How do you support yourself, Mr. Cunningham?
848 A. We support ourselves on the revenue of money that we have got invested, and some that we laid up during these thirty-one years that we were in Seattle.
Q. Now, have you a son?
A. Yes, sir.
Q. Did John Sullivan stand in any relation to your son?
A. He stood as godfather to my first son; he is in Dawson at the present time.
Q. What is your son's name?
A. John Henry.
Q. How old is he?
A. Twenty-eight years old on the twenty-second of January past.
Q. Where was he christened?
A. The Church of Our Lady of Good Help.
Q. By whom?
A. Father Prefontaine.
Q. And a record of his christening will be there with it?

A. Yes, sir, the record will be—is there.

Q. Where were you born, Mr. Cunningham?

A. I was born in a place called Youghal, County Cork, Ireland.

Q. When did *you first become acquainted with John Sullivan*?

A. About the middle of August, 1870.

Q. Did you keep up your acquaintance with him until his death?

—. Yes, sir.

Q. Do you remember about the time that Mr. Sullivan came back from Europe?

A. Yes, sir.

849 Q. Did you have any conversation with him, shortly after his coming from Europe?

A. I was going up on Queen Anne hill to do some gardening there and I met him, or at least overtook him—I did not meet him—on Union street, almost abreast of the armory. He was going down towards Front and I was going down towards Front to catch the cable-car at that time and we got to talking about old times, and says I, "You look pretty well," and he says, "I ought to," he says, "I just been for a trip," and I says, "Were you?" I was not aware that he had been away at the time, and he said, "I was back in the old country," and he says, "I have been to the Paris exposition," and he says, "I am going back again." I says, "That's good." I says, "I suppose you were over the old country," and he says, "Yes, I was all over Ireland," and I says, "How is times there?" And he says, "Tough." He says he went back home and he says he was in the store where I used to run errands as a boy, and I says, "How is everything there?" And he says, "They have changed to the third generation; the same name is running yet," and I says, "Did you make yourself known?" and he says, "No." I says, "I should if I was there."

Q. Did you have any talk with him as to whether he had found his sisters or not?

A. Well, I asked him then, says I, "Did your mother or sisters still live?" I was not aware at the time that any of them were dead. I knew that he had them from his own conversation.

850 He says, "Mother and sister is dead," and he says, "I just settled up the last one's estate when I was over there." "Well," I said, "have you got any more friends there?" And he says, "I have got—to use his own words there he says, "I have got a hell of a lot of cousins there," but he says, "I did not have time to bother chasing them up"—that is the language that he used.

Q. Now, how far from the house where John Sullivan died did you live?

A. Did I live then?

Q. Yes.

A. He lived in a—the center of the block, between Union and Pike.

Q. Where did you live?

A. I lived about a hundred and twenty feet from University and

and Seventh. I was trying to get it in feet. I should judge somewheres about three or four hundred feet.

Q. Did you know prior to his death that he was sick?

A. No, sir.

Q. Did you hear him say anything about being engaged and going to marry anybody?

A. No, sir.

Q. Do you know Sam Coomes?

A. Yes, sir.

Q. Did he talk with you about this case?

A. He did.

Q. Did you tell him what you knew?

Mr. HAYS: I object as incompetent, irrelevant and immaterial and not germane to the issue, unless it is shown that the defendant was present at such conversation.

851 Q. Did you tell him what you knew?

A. I told him just what I have talked about here.

Q. Did you ever have any talk with Mr. Hays about this case?

A. Not to amount to anything. I think, if my memory serves me right, that Mr. Hays and I had a talk, and my wife and he had a talk about this same thing. I think I can remember just about what I said, about the same thing that I have said here.

Q. Did you then tell him what you have said here to-day?

A. Yes, sir, to the best of my knowledge.

Q. When was that—about when was that?

A. It is inside of six months anyway; sometime last fall.

Q. Now, in that conversation with Mr. Hays did he talk with you in regard to Mr. Sullivan wanting to marry Miss Carrau?

A. No, sir.

Q. Did he talk with you in regard to Mr. Sullivan wanting to marry anyone?

A. Well, he tried to make an impression on our minds, both my wife and myself, that Miss Carrau and Mr. Sullivan were going to get married, but we contradicted him—in fact my wife was very decided, and she said that she did not think Mr. Sullivan wanted to marry anybody, and of course I could not positively say that, that he was not going to be married; I could not positively say that way, because Mr. Sullivan was a man that nobody knew his business but himself.

852 Q. Have you ever heard of — Mr. Sullivan's lifetime that made you think that he was going to marry Miss Carrau?

A. No, I never did.

Q. Now, had you ever any business transactions with Mr. Sullivan?

A. Yes, sir.

Q. What were they?

Mr. HAYS: Object to the question as incompetent, irrelevant and immaterial.

A. I loaned him money when he first started into business here. The first acquaintance that I had of him he was clerk for D. N. Hyde, on old Commercial street, in the grocery store there. When Hyde sold out or gave up the business, Mr. Sullivan moved right across the street and started a stand of his own in a building that was there, a vacant building, and he borrowed some money from me for three months to help him out. He said he wanted a little more money than what he had to stock up and I loaned it to him. He also signed a note for me afterwards to Dexter, Horton's bank, *when* my security on seventy-five dollars, for money that I had to use.

Q. Now, did Mr. Sullivan ever tell you where he was born?

A. He did, yes sir.

Q. Where did he say?

A. He told me that he was born in the city of Cork.

Q. And you say that you knew that he had sisters at one time?

A. Well, that is what he told me himself, that he had a mother and two sisters.

853 Cross-examination.

(Mr. HAYS:)

Q. Mr. Cunningham, at the time of the interview in which you have referred with myself and your wife, do you remember having stated in substance: "I met Mr. Sullivan on Union street, near the armory, and had a conversation with him concerning his trip to Ireland, and asked him whether he had found any relatives, and he said that he had not found any, and that he had none unless possibly some very distant cousins" He did——

A. He did not make any such remark, no, sir. That language was not used, not in those words.

Q. Or words to that effect?

A. No. No, he made the impression on my mind, as I have said, then and still, that he had cousins, but he did not have time to chase them up.

Q. Now, as a matter of fact, Mr. Cunningham, are you not mistaken as to the time of my visit to see you?

A. No, sir.

Q. You are sure that it was in the past six months?

A. I think so.

Q. And you are as sure of that as you are about the statement that he said he had "a hell of a lot of cousins"?

A. No, sir; I am not as sure of that as I am of the other statement.

854 Q. Now, then, you do not remember having told me that Mr. Sullivan said that he had no relatives, could not find any, and had none, unless possibly he had some very distant cousins?

A. I am under the impression, Mr. Hays, that conversation was never used in our house.

Q. Are you positive now?

A. I am positive of it, yes, because I could not talk that way, knowing Mr. Sullivan as I did.

Q. Well, this conversation which you had with Mr. Sullivan is the one to which I refer and the one to which you related to me?

A. Yes, I understand.

Redirect examination.

(Mr. HOWE:)

Q. Who is the first person, Mr. Cunningham, that you related the conversation between yourself and Mr. Sullivan to?

Mr. HAYS: I object as incompetent, irrelevant and immaterial.

A. The first who ever came to me to talk about it was Mr. Hays, as near as my memory serves me. Mr. Coles was up there since.

Q. And when did you first relate it to Mr. Right?

A. This afternoon.

Q. When did you first relate it to me?

A. This afternoon.

Q. And you never have related it to Mr. Farrell over there, have you?

A. No, sir.

(Testimony of witness closed.)

Signature of witness waived.

855 SEATTLE, *March* 11, 1902—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.

Present: The master in chancery. Mr. Howe, counsel for the complainant. Mr. Hays, counsel for the defendant.

Colonel I. D. MCCUTCHEON, a witness called on behalf of the complainant, in rebuttal, being first duly cautioned and sworn, testified as follows:

(Mr. HOWE:)

Q. Please state your name.

A. I. D. McCutcheon.

Q. Where do you reside?

A. In the city of Seattle.

Q. How long have you been a resident of Seattle?

A. Nearly eleven years.

Q. What is your profession?

A. Law.

Q. How long have you been a lawyer?

A. Twenty-seven years.

Q. Since your residence in Seattle have you been continually engaged in the practice of law?

A. I have.

Q. I hand you the original petition for letters of administration in the matter of the estate of John Sullivan, deceased, for the appointment of yourself as administrator, signed by Lewis Daussat and Marie Carrau, and ask you whether you have ever seen that instrument before.

A. Before I answer this question I want to make such claim as I may be entitled to, with reference to giving evidence by an
856 attorney that pertains to a confidential communication. I recognize the fact that where testimony is taken before a commissioner or a referee that the reservation cannot be made like it can in the court, therefore I throw myself on the court to take notice of this and protect me in whatever I may have to say.

Mr. HOWE: The position of counsel for complainant is that both Mr. Daussat and Miss Carrau went into the matters which took place between them and Mr. McCutcheon, and also the position that Mr. McCutcheon was acting for himself and not for them, and therefore we do not think that anything which took place concerning which they testified is a privileged matter.

The MASTER: I would like to ask Mr. McCutcheon at the time of the occurrence of this matter he considered at that time that he was a counsel of these parties or either of them.

A. As to the matter contained in this petition, yes.

The MASTER: Well, so far as the master is concerned, in such a matter as this, he feels inclined to leave the question fairly to the witness whether or not he will insist upon the position that he has taken, with a view of excluding the record of any fact which he as a witness may be called upon to disclose. I will not rule arbitrarily upon it one way or the other.

A. My understanding was that it was not in the power of the master to make a ruling that could not be reviewed by the
857 court, and so I put my objection in that case in order that it might go to the court, not expecting a ruling.

The MASTER: With consent of counsel and the witness I will then make no ruling upon the matter.

Mr. HAYS: Counsel for the defendant understands the rule to be that an attorney has a right at all times, whether before a court, sitting as such or before the arm of the court, in the process of giving testimony in any form, to stand upon the privilege given him under the law, and in fact enjoined upon him under his oath of office, to maintain inviolate the secrets of his class. He may waive that right if he sees fit to do so, but the court has invariably, as far as my knowledge goes, excluded such testimony when the objection was properly made and the relation of an attorney in class, was, in fact, admitted or established.

Mr. HOWE: Counsel for complainant replying to Mr. Hays' objection, state that they do not call for any communication between

counsel and client which was not gone into by Marie Carrau and Louis Daussat, but they claim that the same rule applies here which would apply if Marie Carrau and Louis Daussat had called this witness—in other words, Marie Carrau and Louis Daussat cannot testify as to what took place as to—with Mr. McCutcheon, and state that this document was never read to them and that they did not understand it and then prevent Mr. McCutcheon from giving the facts of the case.

858 The MASTER: I still adhere to the intimation I first made with regard to this, and gentleman you may act as you see fit in the matter.

Q. Now, General, state, if you please, the circumstances relating to the signing of that instrument, whether the parties understood it and whether it was read to them and all about it?

Mr. HAYS: The defendant renews the objection, and suggests to the witness the right to exclude the testimony and reserve his answer owing to the relation which he has testified, the existence of the relation which he has testified.

A. Everything contained in that petition was thoroughly discussed and by me written upon a pad with a pencil as it was discussed, and as I wrote it it was talked over, and when that what I have written here was finally agreed upon I reduced to typewriting myself. I again read it to Mr. Daussat and Miss Carrau. They said it was perfectly satisfactory, and signed it; their signatures are appended here to the paper itself.

Q. Did they sign it in your office?

A. In my office and in my presence.

Q. Where did Mr. Peterson take the verification to it, in his office?

A. In his office, across the hall.

Q. Mr. McCutcheon, Mr. Daussat testified that you came to him with a second paper and if that statement is correct, please state what that second paper was?

A. The statement is correct.

859 Q. What was that paper?

A. A day or two after this petition was signed I thought it was advisable to support it with an affidavit of both Daussat and Marie Carrau, and carrying out that purpose I prepared an affidavit. I took them to Mr. Daussat's place of business in the Hotel Seattle, read it to him and explained it to him, and told him why I thought it desirable to make the affidavit, and asked him to have his sister-in-law, Marie Carrau, come down and sign it or for him to take it home with him. He decided on the latter course and took the affidavit. The next day he brought it back to me stating that Marie—in the next day or two he brought it back to me and stated that Marie refused to sign any other or further papers.

Q. Did he state why?

A. He did not.

Q. Do you know of your own knowledge or from information given you by Mr. Daussat, or Miss Carrau, whether at that time either of these parties had consulted Mr. Hays?

A. Within four days after signing this petition Mr. Daussat told me that Marie Carrau had consulted Mr. Hays.

(Mr. HAYS:)

Q. Was Marie Carrau present?

A. She was not.

Mr. HAYS: I object and move to strike the answer on the ground that it is hearsay and incompetent.

Q. Now, when the petition for administration, which you
860 have been holding in your hand, was ready—was read over to Miss Carrau and Mr. Daussat, and they said it was satisfactory, did they understand it?

A. There is no doubt but what they understood it fully, because it had been discussed and read to them. I read it to them first from my notes, so as to get it as they desired to have it, and then I read it from the type-written copy.

Q. From whom did you obtain the information that Mr. Sullivan had died intestate?

A. Mr. Daussat.

Q. From whom did you obtain the information that Miss Carrau and Mr. Daussat were creditors?

A. From Mr. Daussat and Miss Carrau.

Q. Miss Carrau, Mr. McCutcheon, has testified that the only reason that she signed this petition was that it was intended that her sister should sign, but as she was down town and that you told her that she would do just as well.

A. The question of her sister's signature was never talked about. She had never been known in the transaction. She had never been referred to in connection with it. Never had been known to me in connection with it.

Q. Now, Mr. McCutcheon, Mr. Daussat, testified that you went to his place of business with a third paper for him to sign, and which third paper he took home and then refused to sign it, and demanded that you return to him the other papers which he did sign. How many papers did you ever request him to sign?

861 A. Two.

Q. Any more than two?

A. No more.

Q. There was then no third paper?

A. There was no third paper.

Q. And the second paper was the affidavit to which you referred?

A. It was.

Q. And the first paper was this petition which you hold in your hand?

A. It was.

Q. You remember at the time of the hearing the appointment of the general administrator, substituting the name of Mr. Brierly for yourself?

A. I do; yes, sir.

Cross-examination.

(Mr. HAYS:)

Q. Do I understand you to say in this petition for administrator, you did substitute the name of one Brierly?

A. At the hearing.

Q. And was that with the knowledge and consent of Daussat and Marie?

A. It was with the knowledge of Daussat. I did not see Marie Carrau.

Q. But you did explain it to Mr. Daussat?

A. I did.

Q. Now, Colonel, are you not possibly mistaken in your statements that you only took two papers to Mr. Daussat for his signature?

A. No, sir; I am not.

Q. Is it not a fact that, Colonel, that this paper about which you have testified bears date October fifth?

862 A. This one; yes.

Q. Now, if you will kindly turn over to the affidavit on the back, the inner side, please state what date that is.

A. That is the sixth of October.

Q. Now, is it not a fact, Colonel, that Mr. Peterson and yourself found Mr. Daussat on the sixth of October in his restaurant, the Occidental café, and there had him to sign the affidavit?

A. I do not think so; I think it was done over at Mr. Peterson's office.

Q. If Mr. Peterson would so testify, would you then believe that it was made there?

A. I certainly would.

Q. Then if Mr. Peterson should so testify, you would then admit that this would be the second paper that you had taken to Mr. Daussat to sign, and the other paper about which you have testified that he declined to sign would be the third?

A. No, sir, I would not.

Q. Would you not admit then that you had taken this paper to him the second time, for his signature?

A. I do not.

Q. If Mr. Peterson would testify?

A. That it was the second paper?

Q. If Mr. Peterson would testify that you, in company with him, went to the Occidental café, in the basement of the Occidental block, and on the sixth day of October, 1900, obtained Mr. Daussat's sig-

nature to the affidavit, would you not then consider that it was the second paper that you had taken to him?

863 A. I know it was not. I did not consider anything about it, I know it was not.

Q. Would you say then that you had only been to him once?

A. If I went down with this, then I was to him twice.

Q. On two different days?

A. I never presented but two papers to be signed.

Q. Then if you did not explain to him or if you did explain to him what this paper was about which—to which he was referring, would it not be a fact that you had presented to him an affidavit for his signature, which you had never before presented?

A. Well, that is splitting hairs, Mr. Hays.

Q. Just answer the question.

A. I am going to do it, sir, without any directions on your part. No, sir.

Q. I insist on you answering it.

The MASTER: He has answered it.

A. I said, No, sir. Do you want it again? No, sir.

Q. You have not availed yourself as an—of your privilege as an attorney, and therefore I will avail myself as an attorney of the privilege to cross-examine you.

A. Go right on.

Q. Now, Colonel McCutcheon, is it not a fact that you hunted up Mr. Daussat the day after the death of John Sullivan for the purpose of filing this petition?

A. No, sir.

Q. Where did you meet him?

A. He came to my office.

864 Q. He came to your office for the purpose of what?

A. Well, whatever his purpose was it culminated in this business.

Q. Answer my question.

A. I cannot read Mr. Daussat's mind.

Q. When did he come to your office first with reference to this petition?

A. October fifth, 1900.

Q. When did you first converse with him about this petition?

A. October fifth.

Q. That was the first conversation?

A. Yes, I know it.

Q. You are positive about that as everything else that you have testified?

A. Yes, sir.

Q. Did you ever converse with anyone else concerning the filing of this petition before the fifth day of October?

A. I did not.

Q. To anyone?

A. I had a little talk——

Q. Was anybody about filing a petition about the appointment of an administrator?

A. I think I had a little talk with Harry Watson, at Bonnet & Stewart's, but with reference to the date I cannot say Mr. Hays. My opinion is that I talked with Harry Watson?

Q. I did not ask for your opinion?

A. My opinion is that I talked with Harry Watson a day or two after the burial of Mr. Sullivan. There is a way that I could find out exactly, but I cannot give it now.

865 Q. Then you do not recollect meeting Mr. Daussat on the street a couple of days after the death of John Sullivan and there telling him that you thought of appointing him administrator or getting him appointed administrator.

A. No. I did not know Mr. Daussat was a creditor until the fifth of October, 1900, when he came into my office.

Q. Did you know that Sullivan was boarding and rooming at his house and had died at his house?

A. Well, I learned it about the time that this petition was talked about.

Q. When was it talked about?

A. October the fifth, 1900.

Q. Now, Mr. Daussat is a Frenchman, is he not, and speaks the French language, does he not?

A. Yes, sir.

Q. Did you talk to him in French?

A. No, sir.

Q. You spoke to him in English?

A. Yes, sir.

Q. Is it not a fact that Mr. Daussat is quite broken in his manner of speech and it requires careful attention to decipher his words and meaning?

A. Oh, fair attention.

Q. Can you understand all that he says to you?

A. I never had any difficulty. He had been a client of mine for something like four years prior to that—three years or more.

866 And I had talked with him a great deal and became perfectly familiar with him.

Q. Did Mr. Daussat call upon you and ask you to return the paper which he had signed?

A. He did.

Q. When was that?

A. Along after it became a court record.

Q. And what did you do about returning it?

A. I said that it was a court record and I had no further control over it.

Q. What was his appearance, at that time, as to being displeased or otherwise?

A. He did not show any evidence of displeasure, that I know of.

Q. Then you do not know as a fact that that was one of the reasons that caused Mr. Daussat to discontinue your services, perhaps the principal reason?

A. You will have to be more explicit in your questions, I fail to see what you are driving at.

Q. You have no recollection?

A. No, but I want to answer your question.

Q. You were not aware of the fact that because of your inability and failure to return the paper which he had signed and seems to have been the one about which you testified which you had filed in court, was the reason *the* Louis Daussat discontinued further business relations?

A. On the contrary, he told me that his sister, Marie Carrau, had selected you.

867 Q. He told you at that time?

A. He told me at the time that he wanted me to withdraw this paper, that was after it had been put upon the files.

Q. Then he told you that his sister had consulted me?

A. Yes, sir.

Q. At that time that he asked you to withdraw that paper?

A. Yes, sir.

Q. Are you positive about that?

A. Yes, sir.

Q. Colonel, might it not be possible that you are mistaken about that?

A. No, sir.

Q. Did he tell you that through her instructions, as an instruction from me, he had demanded the return of that paper?

A. He asked me to do so, to give up the paper.

Q. Then he told you at that time?

A. I asked him why and he said Marie had employed you.

Q. Had employed Mr. Hays?

A. Yes, sir. Now you have removed the embarrassment from Mr. Howe's questions, that was one of the reasons that I sought to substitute Mr. Brierly for my place as administrator. I did not believe an appointment could be made and I wanted to get rid of the situation.

Q. Now, Mr. McCutcheon, you are good in your memory, clear in your memory of the incidents of which you have testified?

A. Clear, I think.

868 Q. As to the dates and the several transactions took place?

A. Yes, sir.

Q. You have been sick recently?

A. Yes, sir.

Q. Very sick and are not a well man now?

A. No.

Q. And it is possible that your memory might have lapsed on some of these incidents which you have related as to the particular time at which they took place?

A. Not with any great degree of variance, if any variance at all

Q. Well, you have testified that with positiveness that the affidavit to this petition about which you have testified, was signed in Mr. Peterson's office?

A. Yes, sir.

Q. Across from your room?

A. Yes, sir.

Q. Now, are you positive about that, as positive about that as most anything else that you have testified about?

A. Oh, Mr. Hays, I remember generally and pretty completely all that transpired concerning this thing. A little detail of a day in regard to swearing or something of that kind or the exact position, I may not be exactly correct about it, but all that is envolved in the general business that I have stated, I have stated as it occurred.

Q. When you discovered and learned the fact that his sister had employed me to attend to this matter for her?

A. I never said anything about it, sir.

869 Q. Well, as a matter of fact you did not feel that it was quite right or that they were hardly treating you right, after you having been their counsel and attorney for a numbers of years, for the head of the family?

A. I will be frank with you; I had no feeling whatever upon the subject.

Q. You are a man who has very indifferent sentiments or sentimentalities on any subject most, that especially of acquiring business, that of prosecuting your professional lines—you are indifferent?

A. The question is entirely too metaphysical, if I may apply that term, for me to answer—I do not know what you mean.

Q. You testified to the fact that she had obtained other counsel did not have any impression on your mind. I have asked you whether any matter connected with your professional life and acquisition of business, disappointment or successes or reverses and, etc., whether that would affect you at all or whether you are impervious, so to speak, to such things, that you have such a poise of mind that you are not in the least unbalanced or shaken?

A. Well, age has brought some philosophy in that line that I find may be applied to very great benefit to myself. The day was when I was fighting mad and stood upon my common-law right to adjourn to the nearest tavern and damn the court if I did not win—I do not do that any more.

870 Q. Now, Colonel, refresh your mind again upon the question that I asked you some time ago, if Mr. Peterson should testify in this case that he accompanied you, at your request, to the Occidental café and there signed the paper as notary public, and there Louis Daussat signed that paper, as making an affidavit, would it not be natural for Louis Daussat to believe that he had had two papers submitted to him for his signature?

A. I do not know what it would be natural for Louis Daussat to conclude, but this paper is dated October fifth, 1900. It is signed upon its face by both Louis Daussat and Marie Carrau. They both signed it in my office and in my presence and under my direction. Now, such a thing may have occurred and it is possible, as it has occurred to me several times, that I did not find a notary public right on the floor and that when Mr. Peterson came in I took him down to Mr. Daussat's restaurant and had Mr. Daussat swear to it but Mr. Daussat was informed of the fact that he would have to sign and swear to it at the time when he was there.

Q. Now, in the second paper, which you have submitted to Mr. Daussat for his signature and about which you have testified, was that a petition supported by an affidavit?

A. It was not.

Q. What was it?

A. It was an affidavit to be filed in support of this petition.

Q. Have you a copy of that affidavit or the original?

A. I have not.

871 Q. Among your files?

A. I have not.

Q. Was that paper returned to you?

A. It was.

Q. And with the statement that Marie Carrau declined to sign it?

A. With the statement that Marie Carrau said that she would not sign any more papers.

Q. Why did you not have Marie Carrau make affidavit to this petition?

A. Because one petitioner was sufficient.

Q. The petition of one person is sufficient?

A. The petition is signed by two, the verification of one was sufficient, I thought.

Q. Why the necessity of having two sign the petition, would it make it any stronger in the law?

A. She claimed to be a creditor and it was the joining of the two creditors.

Q. What relation was Marie Carrau to Louis Daussat, do you know?

A. Sister-in-law.

Q. Did she state to you in what way she became a creditor of John Sullivan?

A. Yes, sir; I know she did but whether I can tell just now or not I do not know. If I may state my impression, my impression is that Marie said that she had been nursing him during his sickness and that that made her a creditor.

Q. Did she state to you the amount of her claim?

A. I do not know that she did and I have been trying

872 to think. I do not know that either of them did and yet it seems to me as if Mr. Daussat did.

Q. Now you are positive, Colonel, that they came to your office

together in the first instance and requested you to become the administrator of this estate?

A. They came to my office in the first instance, and in the course of the conversation when we got to talking about administrators——

Q. Did they come there on their own motion or at your request?

A. On their own motion; I did not know that they were creditors or had any relation until they did come.

Q. You did not send for them?

A. I did not. I did not know that they had any relations with him.

Q. Now, at the time they called, you say that was on the fifth day of October, 1900?

A. Yes, sir.

Q. And while they were there you sat down and wrote in pencil this petition and read it over to them and discussed it, and then turned around to the typewriter and wrote it off in typewriting yourself, they being present and remaining there during the time that they prepared this petition, and after you had it prepared you requested them to sign it?

A. I did.

Q. Did you read it to them after you had written it on the typewriter?

A. I did.

Q. Had you then written this affidavit on the back which has been filled in as of October sixth?

873 A. That affidavit was read to Mr. Daussat. Mr. Daussat was informed that I would require him to verify the petition.

Q. Was Miss Carrau present at the time that you read this affidavit to Mr. Daussat?

A. They were there together, all the time everything that occurred and went away together.

Q. Were they at your office on the sixth of October?

A. Well, I had explained about that, Mr. Hays, that it may be that on the fifth day of October that I did not get a notary, and it may be that Mr. Peterson and I went down to Mr. Daussat's restaurant on the sixth and Mr. Peterson may have sworn him there. I do not say that he did or did not. I do say, however, that I required Mr. Daussat to verify it and so informed him on the fifth.

Q. Then why did you want another verification from Mr. Daussat?

A. I have not asked for any other verifications.

Q. Did you not testify that you sent him another verification for him to sign and for his sister to sign?

A. I did not so testify.

Q. What was it you sent him?

A. An affidavit setting up the facts with reference to the death of Mr. Sullivan, to be filed in support of this formal petition.

Q. Then this affidavit which you sent him contained substantially what is to be found in this petition.

A. Well, it did contain more in detail.

874 Q. And you say that paper was taken by Mr. Daussat to his sister and then returned to you in a day or two?

A. I say, that he took it and that he said he submitted it to his sister and she refused to sign it.

Q. But returned it to you—that is, the statement—with the statement that she would not sign it?

A. Yes, sir.

Redirect examination.

(Mr. Howe:)

Q. That was the time that he returned it, when he stated the reason Marie would not sign any more papers?

A. Yes, sir.

Q. That she had consulted Mr. Hays?

A. Yes, sir.

Q. Now, Colonel, do you remember whether at the hearing of the different petitions for the appointment of an administrator, Mr. Daussat was present in court?

A. He was not. Mr. Littel admitted the indebtedness and I presented at that time the figures, my impression is, about thirty-five dollars.

(Mr. Hays:)

Q. To whom did he admit the indebtedness was due?

A. It was an open admission in court, generally.

Q. Indebted to whom?

A. That the estate was indebted to Mr. Daussat.

Q. To Daussat?

A. Yes, sir.

Q. Did he admit any indebtedness to Marie Carrau?

A. I cannot tell you. The indebtedness admitted to Daussat was sufficient for my purposes.

875 (Mr. Howe:)

Q. Colonel, the sickness that Mr. Hays has questioned you about is in no way affecting your mind at all?

A. No, sir, it has not.

Q. You are still practicing law, are you not?

A. Trying to.

Q. And are down at your office to-day?

A. I am.

(Mr. HAYS:)

Q. Is it not a fact, Colonel, that a person who is afflicted with any serious ill, throwing a person into physical pain, that the mind is more or less disabled and injured?

A. Well, I am not a medical expert and my illness is not of a nature to deserve one or disturb my mind. I am suffering a little with a bad circulation of the blood; that is about the difficulty.

That the firm of Bowman, Bolster & Eaton, stenographers, being satisfactory to the respective parties in cause were by me designated and appointed to take *cause were by me designated and appointed to take* said depositions as stenographers as aforesaid.

That during the progress of the taking of said depositions certain documentary evidence was by said complainants' solicitor, James B. Howe, Esq., duly offered in evidence and were by me received and marked exhibits as the same appear upon said documentary evidence herewith returned to this court.

That said complainants' solicitor offered in evidence before me certain depositions taken under and by virtue of a commission issued from the above-entitled court, under the seal thereof, by the
876 officer named therein, and returned to the clerk of the above-entitled court, and said depositions so offered in evidence were by me received and are herewith returned, duly certified.

I further certify that said depositions and documentary evidence were marked as exhibits as aforesaid, and said depositions taken in Ireland as aforesaid constitute all of the proofs offered before me on behalf of said complainants and are herewith returned as such to this court.

And I do further hereby certify that the taking of said depositions and proofs by said witness- on behalf of said complainants respectively occupied — days; that the compensation for said master's services and of said stenographers amounts to the sum of $—.

I do further hereby certify that the witnesses so as aforesaid examined before me and whose depositions are herewith returned in my presence waived the reading and signing of said depositions, in which waiver the respective solicitors of the said parties concurred.

All of which is respectfully submitted.

Dated Seattle, Washington, April 2, 1902.

[Seal U. S. Master in Chancery.]

EBEN SMITH,
United States Master in Chancery and United States Examiner and Special Commissioner.

[Duly filed April 4, 1902.]

877 *Defendant's Rebuttal.*

Mr. DAVID KELLOG, a witness called on behalf of the defendant, in rebuttal, being first duly cautioned and sworn, testified as follows:

(Mr. HAYS:)

Q. Mr. Kellog, where do you reside?
A. In Seattle.
Q. How long have you resided here?
A. From time immemorial—between thirty and forty years.
Q. Were you acquainted with the deceased John Sullivan?
A. Very well.
Q. Did you have any conversation with John Sullivan prior to his death, shortly prior to his death?
A. Yes, sir.
Q. Please state the conversation.
A. He had returned from Europe and I saw it in the paper. I met him one day shortly before his death, down in front of the Bailey building. I congratulated him on having good sense to go off and enjoy life with the money that he had accumulated by his economy, and he said, "Yes, I am going back again to Paris; I am going to spend John Sullivan's money;" that is about the *that is about the* whole of it.

Cross-examination.

(Mr. HOWE:)

Q. As close as you can remember, how long was that before his death?

878 A. Well, when I read of his death I was astounded to think it was so near the time that I had talked to him, and thinking of it since this trial was going on I thought it was about three days later.

Redirect examination.

(Mr. HAYS:)

Q. But it was a matter of fact he was *consigned* to his bed for ten or twelve days?
A. I know nothing about that.
Q. It would have been of course a longer time?
A. I was impressed with the fact that it was so very recent that he told me that he was going back to Paris to spend John Sullivan's money.

(Testimony of witness closed.)
Signature of witness waived.

At this time further proceedings were adjourned until to-morrow morning at 10 o'clock.

WILLIAM B. JONES, recalled, testified as follows:

(Mr. HAYS:)

Q. What, if anything, did Mr. Sullivan say to you concerning his trip across to Ireland, as to whether he had found any friends or relatives?

Mr. HOWE: I object to the witness testifying, on the ground that the witness was summoned yesterday and was examined and stated that he had told all the conversation, and the question is therefore not proper at this time.

A. I asked him in regards to his trip and he said that he visited his old home, different parts of Ireland, and did not find any relatives. This part of it I had forgotten yesterday in con-
879 versing. This was part of my conversation that I spoke of yesterday, at the corner of the Scheurman block here. He also stated that from now on—just the same as I stated yesterday.

Q. This part of the conversation I requested you to give in your original examination?

A. Yes, sir; this is part of the same conversation that I had on that day. He said, "I am going to have a good time from now on; I am going to spend six months in Paris every year from now on," and he says, "The idea of John Sullivan blowing himself."

Q. The idea of John Sullivan blowing himself?

A. I had know- him as living and being very saving and frugal man, and I told him that was right, no one but himself, and it was right for him to enjoy himself the rest of his life.

Cross-examination.

(Mr. HOWE:)

Q. When did you first talk with Mr. Hays about this case?

A. Why, this part of the conversation I never gave to him.

Q. When did you first talk to Mr. Hays about this case?

A. Well, I don't know that I ever did talk with Mr. Hays about this case. Mr. Hays asked a few questions of me about two months ago.

Q. About two months ago?

A. Yes, sir.

Q. Did he go to you or you go to him?

880 A. Why he came in the store in a business way and he was in the store and he spoke to me about it.

Q. Now, did he ever have any talk with you about this case yesterday before you went on the stand?

A. No, sir. I did not see Mr. Hays yesterday before coming on the stand.

Q. When was the last time before going on the witness stand that you had any conversation with Mr. Hays about this case?

A. I never had but one conversation and that was in a general way.

Q. About two months ago?

A. About two months ago. The question came up, I think I spoke something about having conversed with Mr. Sullivan, that is the first and only time that I ever remember having a conversation about this case with Mr. Hays.

Q. Now, in that conversation about two months ago, what did you tell Mr. Hays?

A. Why, as near as I can remember, similar as I have given here to-day.

Q. Why did you not mention this matter about Mr. Sullivan's relations?

A. I did not recollect it yesterday. I was called in here and I was very busy in the store, and Mr. Hays' brother came in and told me that they would want me to come up here, and I was busy and I had not given the matter a thought, and after my evidence
881 yesterday I reviewed and went over and remembered this part of the conversation.

Q. And then did you go to Mr. Hays and tell him that you had not stated it all?

A. No, sir; I did not.

Q. Did he come to you?

A. No, sir; I have not seen Mr. Hays since yesterday.

Q. Who did go to you?

A. Yes, I did; Mr. Hays came in to-day and he said that they might want me there again to-day.

Q. Did he discuss your testimony with you?

A. No, he did not.

Q. Did you say that you had forgotten anything in your testimony yesterday?

A. I told some other party *who* possibly some time ago this conversation, who had probably given it to Mr. Hays.

Q. Who was that other party?

A. I cannot recollect, some of my old-time friends that I have spoken to.

Q. How was it, Mr. Jones, that Mr. Hays just put you on the witness-stand to-day without having any conversation as to whether you had told everything yesterday—did you not know what he was going to put you on the stand for to-day?

A. Now, wait a moment. I will tell you how I think that came about.

Q. Just one minute; answer my questions as I put them
882 A. Yes, that is in relation to the first question prior to this.

Q. I want you to answer my questions as I put them. The question is this: Have you talked since yesterday with Mr. Hays in regard to your testimony?

A. No, sir.
Q. Have you talked with any one?
A. Yes, sir; I have.
Q. With whom?
A. Mr. Hays' wife—that's how it came about; I recollect that.
Q. When did you talk with her?
A. Yesterday afternoon, I think.
Q. How did you happen to talk to her?
A. She was in buying a pair of shoes for her little child, and I was saying that I was up before the court to-day in regard to the Sullivan estate, and I said that when I went up I did not finish all the conversation between Sullivan and I, and I suppose Mrs. Hays told Mr. Hays, and that is probably the way that it come about. I have not seen Mr. Hays.
Q. And what time was that?
A. Why, that was in the afternoon; I do not know the exact time.
Q. Well, about what time?
A. I should judge about three or four o'clock; somewhere along there, I should think it was.
Q. What kind of shoes were bought?
A. A pair of shoes for the little girl.
883 Q. Now, why was it that yesterday when Mr. Hays' wife put the question whether that was all the conversation that you did not remember what you had testified to to-day?
A. I could not say; I suppose lack of memory; nothing prompted me since then.
Q. What revived it in your recollection?
A. Why, I was talking about various estates and the fact of the Buttler estate, that that was similar to this. The man went home after an absence of forty years and did not find a living soul, much less a relative, and this occurred to me in regard to this Sullivan, on him going home after a lapse of years and finding no relatives, and I said, by the way, I did not testify that up there before them and about him finding no relatives there, and also the peculiar thing of him making the remark of blowing himself and spending money now at this late age.
Q. Now, just what words did Mr. Sullivan say to you about his relatives?

Mr. Hays: I object to the question as having been all gone over two or three times.

A. He said that he visited the different places where he had lived, and supposed that he had relatives and did not find any relatives.
Q. You are sure that these are the words that he used?
A. Yes, sir; I am.
Q. Absolutely sure?
A. Yes, sir: I am.

884 Q. Did he tell you that he had administered on his sister's estate?
A. No, sir.
Q. Did he tell you that he had not made himself known?
A. No, sir.
Q. Did he tell you that he had visited the store where he worked as a boy?
A. No, sir.
Q. Did he tell you that he had not found anyone whom he knew?
A. No. He did not do that; it would not have any bearing on that.
Q. Did he tell you that?
A. No. I did not have over five or seven minutes' conversation with him.
Q. Did he tell you that he looked for any relatives?
A. Well, he said he had been to these places and did not find any.
Q. Did he tell you that he had looked for any relatives?
A. No. He did not use those words.
Q. Or words to that effect?
A. He said that he had been to these different places and had not found them.
Q. But whether he looked or not he did not state?
A. He did not state.
Q. Whether he made any investigations, he did not state?
A. I suppose he must have.
Q. I did not ask you what he supposed; I asked you what he said?
A. No, sir; he did not say that.
Q. Did he tell you that he had visited the house that he used to live in?
A. No, sir.
885 Q. Did he tell you that he had visited the street that he had lived in?
A. No, sir.
Q. Did he mention what city he had lived in?
A. No; he did not mention any city.
Q. No cities at all?
A. No, sir.

(Testimony of witness closed.)
(Signature waived.)

[SEAL.]

____ ____,
U. S. Master in Chancery.

N. S. PETERSON, a witness called on behalf of the defendant, being duly sworn, testified as follows:

(Mr. HAYS:)

Q. What is your name?
A. N. S. Peterson.
Q. What is your business or profession?
A. Attorney at law.
Q. Where do you reside?
A. Seattle.
Q. I will ask you to examine this paper and especially the signature and the verification?
A. Yes, sir; it is my signature.
Q. State under what circumstances and where it was that you appended your signature to that affidavit or verification and at whose request.
A. I am unable to identify the paper any further than to say that it was subscribed and sworn to in my presence on the day on which it purports to have been done; that is, on the sixth day of October, 1900, by Louis Daussat.

886 Q. Where were you when this was *tried* and sworn to?
A. I cannot say, I cannot identify the paper sufficiently to state where it was. It was in Seattle.

Q. Did you tell me this morning that you and Colonel McCutcheon went to the Occidental café, in the Occidental block, where you had Louis Daussat swear to the petition to have Mr. McCutcheon appointed administrator?

Mr. HOWE: I object as leading.

A. I did not know that I did not know what kind of a paper; I simply stated that I went with Colonel McCutcheon to that place down there, the café in the Seattle hotel, and swore a man to a certain paper who signed the paper before me and swore to it.
Q. Down in the basement?
A. Yes, sir.
Q. Now, do you know who that man was?
A. No, I do not.
Q. Is this the paper?
A. I could not say whether that was the paper or not.
Q. Have you ever sworn that man to any other paper to your knowledge?
A. No, not to my knowledge. I presume that is the paper but then I do not know that it is. I cannot identify the paper. I go very frequently with Colonel McCutcheon to different places and I do not know whether that was the paper or not.

887 Q. I did not ask you to identify this paper especially, only to indicate or identify the fact of your having, as a notary public, sworn Louis Daussat, whose signature appears upon it, in his place of business?

A. I swore the man who signed that paper; he swore to it before me on that day.

Q. In the Occidental café?

A. I could not say as to that.

Q. Well, you do not deny saying to me that you did tell me that you had sworn Louis Daussat, this Frenchman?

A. No, certainly not. I did certainly go down there with Colonel McCutcheon and swore a Frenchman down there.

Cross-examination.

(Mr. Howe:)

Q. Now, as I understand you, this paper which Mr. Hays showed you and which is the original petition for the appointment of Mr. McCutcheon as administrator of the estate of John Sullivan, deceased, all you know about that is that you took the verification to it?

A. Yes, sir.

Q. Where you took it you do not know?

A. No.

Q. And you do not remember the occasion of your taking it?

A. No, not that particular paper. I remember an occasion of going down there. I think he was a cook or a waiter down there; he acted in some capacity in that restaurant, and I remember going with Colonel McCutcheon down there and having him sign a paper and swear to it before me, in the restaurant or the saloon.

888 Q. Have you any recollection of what that paper was?

A. No, sir.

Q. Have you any recollection of the time and place that you took this verification?

A. Not any further than I make it a rule to see that the paper is dated on the day upon which it is verified I presume it was done on that day.

Q. And the place where you took this verification, you do not know where it was except that it was in Seattle?

A. No, sir.

Q. Now, you are careful, are you not, in taking affidavits?

A. I try to be.

Q. And you do not put your name to a statement which you know is not correct, do you?

A. No, sir, not knowingly.

Q. Now, in this verification, you state "Louis Daussat, being first duly sworn, on oath says, that he is one of the petitioners in the foregoing petition; that he has heard the foregoing petition read and knows the contents thereof and believes the same to be true." Now did he make that statement to you?

A. I presume he did. I no doubt swore him in that form.

Q. And are you not particular, always before taking a man's affidavit to see that he understands what he swears to.

A. Yes, sir, I try to be particular. I may have simply sworn him in the usual way, "You solemnly swear that the statements
889 contained in this affidavit are true to the best of your knowledge and belief," without repeating the particular language in the affidavit. I often do that. I always do one or the other.

Q. But you always ask the party whether he knows what he is swearing to do you not?

A. Yes, sir.

Q. And you are satisfied that on this occasion you followed that rule?

A. I am pretty certain that I did, yes, sir. I may have simply sworn him in a general way, that the statements contained in that affidavit are true to the best of his knowledge and belief, or words to that effect.

Q. But you are particular to know that the party knows what he is swearing to?

A. Yes, sir, I try to be.

Redirect examination.

(Mr. HAYS:)

Q. Now, is it not a fact in most notarial work where acknowledgments or affidavits are taken that the matter of the official signature, after a person has signed an affidavit or signed a document, whatever it may be, either an acknowledgment to a deed or a mortgage or an instrument, that the work of the notary is but a formal one and it is exercised by most of the notaries in a very indifferent way?

Mr. HOWE: I object as incompetent, irrelevant and immaterial.

Q. And the notary as a matter of fact does not know what the instrument is, assuming always in each case that the person signing it knows what he was signing?

890 Mr. HOWE: I object as incompetent, irrelevant, and immaterial.

A. Generally speaking, the notary, that is to say—I don't generally know what the instrument contains but I do make it a rule to swear a party to it.

Q. To an instrument that has an affidavit or an acknowledgment?

A. Yes, sir, or if he acknowledges it before me.

Q. But you do not go and read over the instrument that he is swearing to?

A. No, sir.

Q. You do not—you did not read it over to him, and if he has not read it you do not know anything about it?

A. Not unless it be in certain matters connected with pension papers.

Q. Or in matters in which you are the attorney and it is your duty to do so?

A. Yes, sir.

(Mr. HOWE:)

Q. But you do ask him whether he knows what he is swearing to?

A. I ask him if that is true.

Q. You ask him if it is true?

A. I swear him as to whether that is true, what is contained in the affidavit.

Q. Don't you remember the occasion of your going with Mr. McCutcheon down to the café in the basement of the Occidental?

A. I can just barely remember it, that is all.

Q. Do you say that you barely remember it?

A. Yes, sir.

891 Q. Now, have you been there more than once with Colonel McCutcheon?

A. No, I think not.

Q. And you do not remember when that was?

A. No, sir, except that it was quite a long time ago. I assume it is on that date.

Q. It is only your presumption?

A. That is all.

Q. Now, as a matter of fact might not you have sworn Mr. Daussat to this paper in your office, in this building?

A. Yes, I might.

Q. Now, if Colonel McCutcheon should be positive of the fact that you took this affidavit of Mr. Daussat in your office in this building, would that shake you in the impression that this might be the fact that you took it in the Occidental café?

A. Yes, sir, it would.

Q. You would then not put your recollection of the matter against this, would you?

A. No, sir, I would believe that it was some other paper that I executed down in the Occidental café.

Q. Of course it is impossible for you as a notary to recollect each and every paper that you execute as a notary?

A. Of course it is not possible.

Q. You do not pretend to carry in your mind the places where the documents — executed before you?

A. No, sir.

(Testimony of witness closed.)
(Signature of witness waived.)

[SEAL.] ——— ———,
U. S. Master in Chancery.

892 LOUIS DAUSSAT, recalled in rebuttal, testified as follows:

(Mr. HAYS:)

Q. Mr. Daussat, examine this paper and that signature, and state what it is.

A. That is my signature all right.

Q. That is what I want to know. You have no doubt about that being your signature?

A. No, sir.

Q. Where were you when you signed this petition, if you remember?

A. I never saw that before; I never read it before.

Q. You never read it before?

A. No, sir.

Q. Is that your signature to it?

A. Yes, sir.

Q. Now, where was it that you put your signature to it and at whose request, and where were you when you signed that there and at whose request?

A. I am in the office of Mr. McCutcheon.

Q. Where were you when you signed this?

A. I never read this too.

Q. You never read that?

A. No, sir.

Q. Well, that is your signature?

A. Yes, sir.

Q. How did you happen to sign it without reading it?

A. Well, because I believe I may say at that time I had not time at all to read these papers, and he asked me to sign, and I says I haven't time, and he says, "Never mind, you can sign that if you believe me," and I thought it would be all right and I signed.

Q. Where was it when he said it would be all right, never mind, and you signed that—where were you?

A. In my business place.

893 Q. Now, Mr. Daussat, is not that the second paper to which you referred in your examination, that was given to you?

Mr. HOWE: I object as leading.

Q. Is not that the second time that you were asked by General McCutcheon to sign the paper, this was the second time?

A. This one is the second time, yes.

Q. Now, when you signed this paper first in General McCutcheon's office how did you happen to go to his office?

A. Because he told me to come and see him.

Q. He requested you to come and see him?

A. Yes, sir.

Q. When did he so request you?

A. At the time, the first time I met him on the corner of Second and Madison street.

Q. Did you tell him at any time that you would like to have him appointed administrator?

A. No, sir.

Q. Of the Sullivan estate?

A. You tell me that again.

Q. When he spoke to you on Madison street or at any other time go to him and request him to become administrator of that estate?

A. No, sir. The first time that I met Mr. McCutcheon was on Second street and Madison street, and he told me he wanted an attorney to appoint you as administrator, and I said that it would be all right.

894 Q. When was that?

A. That was a day after Mr. Sullivan was dead.

Q. Now, when you went to the office of General McCutcheon at his request, as you have stated, was this paper handed you all ready prepared at that time for your signature?

A. Yes, sir.

Q. Did the General, on that day or any other day, sit down or stand up in his office, and take a pencil and paper and write out the words that are on this paper, and then from that paper read it to you, from the pencil, what it was?

A. No, sir.

Q. And did he on that day or any other time transcribe from his memorandum on the typewriting machine, or with a typewriting machine, on this paper or any other paper?

A. No, sir, never did.

Q. Of that, in your presence?

A. No, sir.

Q. Now, then, as a matter of fact, when this paper was presented to you it had been prepared before you went to his office?

A. Yes, sir.

Q. You are positive about that?

A. Yes, sir, I am positive.

Q. Then, if General McCutcheon has testified in this case that he wrote this out while you were there waiting both in pencil and then transcribed it on the typewriter, he is mistaken?

A. Yes, sir, he is mistaken; I am sure of that.

Q. And if he testified that you signed this petition or rather requested him to become administrator, and that it was at your

895 request that he was to make this application, is he or is he not mistaken?

A. No, sir, I have never told him that I wanted him appointed administrator at all. He told me himself and I signed a petition for his appointment as administrator and not mine.

Q. When this third paper that you testified to was given you, and you had taken it home and exhibited it to your sister, did you return it to General McCutcheon?

A. Yes, sir.

Q. You gave it back to him?

A. Yes, sir.

Q. What was the reason that you gave him that you would not sign the paper or that you gave it back to him?

A. Well, I signed two papers, and I did not see what good it would do, and I became suspicious and I refused to sign any more papers, and I was afraid it might prejudice our rights, and I asked him to give the papers back.

Q. You requested him then to give back the papers?

A. Yes, sir; he says he cannot do it.

Q. Did you at that time tell General McCutcheon that another reason then that he did not want to sign it for was that it would prejudice your rights?

A. Yes, sir.

Q. Did you tell him on that occasion or any occasion that your sister Marie had employed Mr. Hays as her attorney and therefore you did not want to sign the paper?

A. I did not.

Q. Have you at that time or had your sister, to your
896 knowledge, consulted Mr. Hays, myself, concerning this case in any manner?

A. No, sir.

Q. You are positive of that?

A. Yes, sir, I am positive. We had no intention of seeing you at that time.

Q. You had no intention then?

A. No, sir.

Q. Never had considered it?

A. I had not considered it at all.

Q. When did you first consult me with reference to this will?

A. Well, after a little while, after I saw Judge Burke.

Q. Do you remember and can you give approximately the date or the day of the month or the month when it was?

A. Well, it was a little while after I saw Judge Burke, and I saw Judge Burke and the other gentleman probably the last day of November and I saw you after that.

Q. Did you consult me before the first of January?

Mr. HOWE: I object as leading.

A. Yes, sir.

Q. Did you consult me before the fifteenth of December?

Mr. HOWE: I object as leading.

A. It was the beginning of December, probably.

Q. In the beginning of December?

A. Yes, sir.

(Signed) LOUIS DAUSSAT.

[SEAL.] ——— ———,
U. S. Master in Chancery.

897 Cross-examination:

Mr. Howe: Mr. Daussat, you say this paper which Mr. Hays showed you, the original petition for the appointment of Mr. McCutcheon as administrator, is the second paper that you signed?

A. I do not know whether the second or first.

Q. Why did you tell Mr. Hays this was the second paper?

A. I did not tell him it was the second paper.

Q. You did not tell him it was the second paper.

A. I say I never read that paper at all. This is the second paper (referring to the last sheet) and this other one is the first one.

Q. Then you want to say that the first sheet you call the first paper?

A. Yes, sir, because I signed that.

Q. The second sheet you call the second paper?

A. Yes, sir, that is the second paper.

Q. And that is why you call it that way?

A. Yes, sir.

Q. And these are the only papers that you signed—is that right?

A. Yes, sir.

Q. And the other paper that McCutcheon, that—presented to you you refused to sign?

A. Yes, sir.

Q. Did he give you that other paper before this one or this one before the other?

A. No, sir; the other paper I did not sign.

Q. You call this two papers?

898 A. Well, I see two names; I cannot find three; I sign two.

Q. You signed both of these?

A. Yes, sir.

Q. But you call this original petition and this affidavit on it two papers?

A. Well, I signed—there are my two signatures and I do not know one or two papers.

Q. That is not my question; just answer my question. Do you call a petition one paper and the affidavit another paper?

A. I do not know, sir—you have got two signatures.

Q. That is the reason that you call it two papers?

A. I signed two papers.

Q. Do you call these two papers?

A. I don't know, sir.

Q. Do you call this petition and this affidavit two papers?

A. I know there are two signatures; this is my signature and this is my signature. You may call it two papers or not, I do not know. I signed the two papers, that is all.

Q. These two papers?

A. I signed the two papers.

Mr. Hays: I object to further interrogation of the witness. He has explained to counsel and it seems to me that he has explained fully.

899 Q. Now, just listen to my question and give me an answer. Do you call the document which I show you, and which is the same document which Mr. Hays showed you, two papers or not?

A. I—these are my two signatures; I do not know whether it is two papers or one.

Q. I ask you do you call them two?

A. I say I signed two papers; I do not know whether I signed two times on the same paper. I signed the two signatures; they are mine.

Q. When you say that you signed two papers, do you mean the first sheet I now show you and the second sheet which I now show you?

A. Yes, sir.

Q. That is what you mean by two papers?

A. Yes, sir—oh, yes, sir.

Q. Now, did you put your name on the second sheet on the same day that you put your name on the first sheet?

A. I cannot tell you, sir, because I did not read the paper.

Q. You never read the paper?

A. No, sir; I do not know; he make me sign that, the two times.

Q. Did you on the day that you were in Colonel McCutcheon's office sign more than one paper?

A. No, not in Mr. McCutcheon's office; I signed the one paper.

Q. Where did you sign the other paper?

A. In my business place.

Q. When?

A. A little while after that.

Q. How long after that?

900 A. I do not know, sir.

Q. How many days?

A. I cannot recollect.

Q. About how many days?

A. I do not know; I cannot recollect.

Q. Was it a week?

A. I don't know.

Q. Was it a month?

A. Oh, no; before a month. I cannot recollect what time.

Q. You do not recollect whether it was a week?

A. No, sir.

Q. Who was with Mr. McCutcheon when you signed the second paper?

A. One gentleman.

Q. Who was he?

A. I do not know.

Q. Did you ever see him before?

A. No.

Q. Have you ever seen him since?

A. No.

Q. What did he say to you?

A. He says, he came in and wanted me to sign this paper, and I said, "I am very busy; I am alone here in the kitchen and I cannot do it now, I have not got time. I have got too many orders coming, and the waiters were coming and I cannot sign the paper," and he says, "I *am here now and you ought to sign it*," *and I says*, "I cannot do it now, we haven't got time to sign. "Well," he says, "it don't take a second to sign," and he insisted on my signing it, and I says, "That is all right; I will sign it." I don't know how many sheets; I know that I signed one paper at that time and just as he asked me to.

901 Q. Now, you and your sister were in McCutcheon's office together, were you not?

A. Yes, sir; on his request.

Q. You were there together?

A. After he requested me to bring my——

Q. You and your sister were in Colonel McCutcheon's office together, were you not?

A. Yes, sir.

Q. And you signed one paper?

A. Yes, sir.

Q. And your sister signed right under you?

A. Yes, sir; she signed the same paper.

Q. You do not remember whether this paper on the blue sheet was signed by you a week after you signed the first paper or not?

A. Well, not right away; it was a little after.

Q. A week after?

A. I do not know whether one day or a week; no more than one week, probably.

Q. You have no recollection about that?

A. No. Some time pretty near.

Q. Now, when did he come with the next paper which you took home?

A. A little while.

Q. About how long?

A. I do not know.

Q. I say about.

A. In a short time; he came in a short time.

Q. Was it a week?

A. I do not know. It was a short time. I cannot tell a week or a day.

902 Q. Why is it that you know so well the exact conversation that took place on that day and you do not know the time?

A. I do not, sir.

Q. You do not?

A. No, sir.

Q. Now, what was the conversation that took place?

A. Where?

Q. In your place?

A. He wanted me to sign the paper.

Mr. HAYS: Counsel is a little too close to the witness and is liable to become excited.

Mr. HOWE: Not at all.

Q. You do not get excited?

A. No, sir; I am telling the truth.

Q. Everything you are saying is true?

A. You tell me something, you persist in something you know well yourself——

Q. You are—you think I am persisting in something?

A. Yes, sir.

Q. You think I was down there at that time?

A. No, you know well, because I tell you first.

Q. You think because you told me that I ought to stop?

A. I don't know.

Q. Now, what time was it that they came down there?

A. I do not know; I could not recollect the date.

Q. You cannot recollect the date?

A. No, sir.

Q. You cannot recollect the time?

A. No, sir.

Q. Can you recollect the month?

A. Yes, sir.

Q. What month was it?

A. It was in October.

Q. It was in October?

A. Yes, sir.

903 Q. Was it before the middle of October?

A. Yes, sir.

Q. Well, now, what was in that paper that you called the third paper that you took home?

A. I do not know, sir.

Q. What was it about?

A. I do not recollect.

Q. Cannot you recollect something, some words that were in it?

A. No, sir.

Q. What did you and your sister talk about it?

A. I say, I talked about it; I do not want to sign because he make me sign papers very precipitately and I am too old now to sign papers. I believe in him at first.

Q. Then, as I understand you, because you signed the first page of this paper that Mr. Hays showed you, because you signed the second page of that paper that Mr. Hays showed you, and because he gave you another paper, you became suspicious, is that correct?

A. Yes, sir.

Q. Now, is there anything in this paper that Mr. Hays showed you that made you suspicious?

A. I did not read it; that is what I did not read; that is what made me suspicious.

Q. And the reason that you became suspicious was because you did not see the paper that you first signed?

A. Yes, sir.

Q. Did you ever ask him to let you see them?

A. Where?

Q. Anywhere?

A. No, sir.

Q. Then why did you become suspicious?

904 A. Well, because the third paper he showed me I did not like something; I did not like it.

Q. What was in it?

A. I do not recollect. It is a good while ago, but I don't know.

Q. You remember it said something about the will.

A. No, I do not know. I cannot recollect what it was.

Q. You read it, did you not?

A. Yes, sir.

Q. You took it home to read?

A. Yes, sir; I asked permission to take it home.

Q. You and your sister read it over, did you not?

A. Well, I took it home.

Q. Why was it, Mr. Daussat, that you took that paper home and you cannot tell us some one word that was in that paper but you can recollect this conversation that took place in your café when you say that you were so busy?

A. This second paper that he offered me to sign?

Q. Why is it that you can remember all that was said at that time, and you cannot remember anything that was in this paper that you would not sign that you had read?

A. I cannot remember what was in the paper; I do not recollect at all.

Q. Why can you remember the words that Mr. Sullivan said?

A. Because I was interested in that.

Q. You were interested in that?

905 A. Because the first night it made an impression and I know it well.

Q. This third paper that he gave you did not make any impression on your mind?

A. Well, certainly; I refused to sign.

Q. Did it make any impression on your mind?

A. Well, I do not know; I refuse to sign.

Q. Did it make any impression on your mind?

A. I cannot recollect.

Q. You do not know whether it made any impression?

A. I do not recollect that.

Q. How many pages was it?

A. I do not know.

Q. Was it white or blue paper?

A. I do not recollect that.

Q. How long a paper was it?

A. I cannot recollect that. It looked something like this.
Q. It looks like this?
A. It looks something big; something like that.
Q. Was it a long paper?
A. I cannot recollect.
Q. And you gave it back to Mr. McCutcheon?
A. Yes, sir.
Q. Now, why was it the other day in testifying that you did not recollect when you had first gone to Mr. Hays?
A. Well, it passed my mind. I made a mistake in my mind; I cannot recollect sometimes, you see.
Q. And you have recollected that since?
A. Yes, sir.
906 Q. Now, since that time the other day have you talked with Mr. Hays about this case?
A. Well, we talked some weeks; sometimes.
Q. Have you talked with him since you testified the other day?
A. Yes, sir; I have talked with him.
Q. Did you talk to him about the time when you went to his office?
A. No, sir.
Q. And did you talk about going to Colonel McCutcheon's office?
A. No, sir.
Q. And did you talk about Colonel McCutcheon going down to your café?
A. No, sir.
Q. And did you talk about Colonel Cutcheon writing this paper out on a typewriter?
A. No, sir.
Q. So that none of these matters that you have testified to at this time have you talked to Mr. Hays about?
A. No, sir.
Q. Did you talk to Mr. Hays' brother about it?
A. No, sir.
Q. Have you talked to anyone about it?
A. No, sir.
Q. You just kept that locked in your own breast?
A. They telephoned me to come here.
Q. I say you did not talk with anybody about anything you have told here to-day?
A. No, sir.
Q. Have you talked with Mr. Hays' brother at all to-day?
A. I saw the brother but I did not talk anything.
Q. Have not you talked to him?
907 A. About this case?
Q. Were not you talking with him right in the hallway here as Mr. Wright passed by you, right in the hallway, with Mr. Hays' brother?
A. I asked him if my sisters were up here.

Q. That is all you talked about?
A. Yes, sir.
Q. You did not talk about this case at all?
A. No, sir.
Q. You did not talk about this case at all?
A. No, sir, not about the case.
Q. You want it understood that Mr. McCutcheon did not write out this paper when you and your sister were in his office?
A. No, sir.
Q. It was all ready?
A. Yes, sir.
Q. Did not you stand out here talking with Mr. Hays' brother?
A. I did not.
Q. You and Mr. Hays are not so intimate that he called you Louis, are you?
A. Well, he calls me Louis or Daussat.
Q. How does he generally call you?
A. I cannot say that; Mr. Daussat or Louis, it don't make any difference.

(Mr. HAYS:)

Q. Sometimes call you Louis and sometimes call you Daussat?
A. Yes, sir, some call me Louis and some Daussat.

(Mr. HOWE:)

Q. You do not think it necessary for Mr. Hays to apologize when he calls you Louis?
908 A. No. He has no more right to call me Louis than you have.
Q. You think not.
A. I think not. I have known you a long time—quite a little bit. I know Mr. Hays many years too.
Q. You have known me a long time?
A. I have known you and I have talked to you.
Q. You know me?
A. Yes, sir, I know your name.
Q. Where did you ever see me?
A. I have seen you on the street.

(Signed) LOUIS DAUSSAT.

(Testimony of witness closed.)

[SEAL.] ——— ———,
U. S. Master in Chancery.

I further hereby certify that the firm of Bowman, Bolster & Walthew, stenographers, being satisfactory to the respective parties in said action, were by me designated and appointed to take said depositions as stenographers as aforesaid.

I further hereby certify that said depositions and proof as afore-

said constitutes all of the proof offered by and on behalf of said defendants, and the same are hereby returned as such to this court.

I further hereby certify that the witnesses so as aforesaid examined before me and whose depositions are herewith returned, in my presence waived the reading and signing of said depositions, in which waiver the respective solicitors of the said parties concurred, except as to the depositions of Marie Carrau, Hermance Carrau,
909 Augustine Daussat, Louis Daussat and Mrs. Eames, as to which last-named witnesses their depositions as aforesaid were by me as said officer named read to them respectively, by them respectively corrected and subscribed in my presence, and by them respectively sworn to before me as appears in said record.

I do further hereby certify that said witnesses, Marie Carrau, Hermance Carrau, Augustine Daussat, and Louis Daussat, testified before me in the order here named, and not in the order in which they appear in the foregoing depositions to have testified.

I do further hereby certify that the taking of said depositions and proofs as aforesaid on behalf of said defendants occupied — days; that the compensation for said master's services and of said stenographers amounts to the sum of $—.

All of which is respectfully submitted.

Dated Seattle, Washington, April 2, 1902.

EBEN SMITH,
United States Master in Chancery and United States Examiner and Special Commissioner.

[Duly filed June 2, 1902.]

910 COMPLAINANTS' EXHIBIT "Y."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON TERRITORY, *April 29th*, 1879.

Thos. S. Lyons, Esq.

DEAR SIR: Your valued favor of March 30th came duly to hand. I am very much pleased with the course you have pursued and the interest you have taken in my sister's welfare, and also the kind attention extended by your sister in law. I am very grateful to each of you for your kind attention to my sister in her affliction. I am real sorry to know that there is no prospect of her recovery.

You have done perfectly right in having my sister placed in asaylum, where she will be taken care of, and having sufficient money on hand to pay for her maintenance I think it is right to have it expended in making her as comfortable as possible under the circumstances.

Hoping that you may continue your kind attentions to my sister,
I am most gratefully yours, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

911 COMPLAINANTS' EXHIBIT "Y 1."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Address on envelope.)

THOS. S. LYONS, Esq.,
No. 3 Grenville Place,
Cork, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 2."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON TERRITORY, *Oct. 7th*, 1882.

Mr. Thomas S. Lyons.

MY DEAR SIR: Your very kind letter of August 31st, with statement of my sister's bank account came duly to hand. I really must say it is quite satisfactory. You will please continue the same arrangements in regard to the care of my sister and draw from her own fund for her maintenance. I see that she has sufficient to her credit to keep her for some time. Believe me that I will bear in mind and see to it that her account in the bank is not entirely drawn. Please mention to Mrs. Lyons that I am very grateful to her for her kindness in furnishing my sister with clothing boots &c. Also the number of newspapers that she so kindly sent me—they are the first from my native city that I have had the pleas-
912 ure of reading for a number of years. I have sent to you by Wells Fargo & Co. express a few table mats for Mr. Lyons, when received you will please be so kind as to hand them to her. They are made by Indian women living on the sea coast of this Territory.

Believe me, kind sir,
Your very humble servant, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 3."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Address on envelope.)

Mr. THOMAS S. LYONS,
3 *Greenville Place,*
Cork, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 4."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON TERRITORY, *April 11th*, 1888.

Mrs. E. Lyons.

MADAM: Your very kind letter of March 5th came duly to hand. Also the bunch of shamrocks, I was very agreeable surprised
913 and pleased at receiving them. You were very kind in sending them to me as they brought such pleasant recollections of the land that I left so many years ago. They reached me some days after — Patrick's day, but I was just as glad to receive them. I set them out; they were nicely preserved for such a long journey of six thousand miles. I regret to say that your last letter failed to reach me. I returned last fall from a very enjoyable trip to the various cities and places of interest in this new country. I do not intend to engage in any permanent business for some time yet. I am thinking of going to California this summer. It is not far from here, only a three days' ride on a steamer or a little less time by rail. I will retain my property here as it is very well located and will increase in value every year. Seattle is very prosperous at present, two new lines of railroad are being built which will open a very extensive country which abounds in coal, iron, and timber, and will increase the trade of this town very much. I send you by this mail a package with some photos. A street scene in Seattle. How logs are brought from the woods to the sawmills, a group of Indians, view of Niagara falls, also my own photo.

Wishing you every enjoyment of health,

Very truly yours, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

914 COMPLAINANTS' EXHIBIT "Y 5."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
No. 8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 6."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

MONTREAL, CANADA, *July 15th*, 1887.

Mrs. E. Lyons.

DEAR MADAM: I have sent to you to-day by the Canadian Express Company a small box of Indian curiosities which I collected on my travels. I hope that they may arrive safe and may interest you. You have been so very kind to my sister while living *and* needed a kind friend so much in her great affliction that I appreciate very much the kind favors that you have extended to her. I hope that I may never forget them. I arrived in this city a few days ago from Boston. I have been traveling quite extensively in the United States and British Columbia. Now I hope to see many places of interest in Canada. I expect to return to Seattle, Washington Territory, about the first of September.

915 I did think of extending my trip to Ireland. I have given up the thought of doing so at present, but may at some future time. I have many miles to travel before I reach my starting point.

Give my kind regards to Mr. Lyons. Please say that I will write to him in regard to the money in the bank left by my sister.

Most gratefully yours, JOHN SULLIVAN.

N. B.—The box is marked to Mr. Lyons.

J. S.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 7."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
No. 8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 8."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON, *Aug. 20th*, 1892.

Mrs. E. Lyons.

DEAR MADAM: It is with much pleasure that I acknowledge the receipt of your kind letters of July 27th and one enclosed of
916 Oct. 17th, 1881. Also photos views of Cork and Belfast. Cork, Belfast and London papers were duly received. You were very thoughtful and kind in sending them to me, which I appreciate very much. I was grieved to hear of the loss that you have sustained in the death of Mr. Lyons, and later of your dear son. I offer you my most sincere and heartfelt sympathy and may God comfort and help you in your heavy loss. I regret that I did not receive those letters that were returned to you. I was absent from the city at that time traveling. I left August, 1888, and returned May, 1889. June 6th, 1889, the fire wiped out the business portion of the town. My buildings were wiped out with the rest. For a year after I was very busy rebuilding. In the meantime we had the streets widened and straightened; now we have quite a respectable looking town, good buildings and wide streets. It really seems now as if the fire was a blessing in disguise. We have doubled in population since the fire, 60,000 now, and we expect to have 100,000 within the next five years. We have a fine street car system; 63 miles of electric lines and 22 miles of cable, fare 5 cents on all lines, the longest is five miles "electric."

I have not been away from Seattle any great distance since I returned some years ago. I expect to spend a part of the winter in southern California and in the spring I will go to the World's Fair to be held in Chicago. I will try and arrange matters so that I can

make a trip to Ireland next year. I see by the views of Cork
917 you sent me the principal streets looks about the same as they did when I was a boy, the same buildings quite old-fashioned in appearance. Belfast is quite a modern looking city, fine business buildings and *have* an air of activity and prosperity. The views were very good. I notice one thing that your streets are not marred by the telegraph, telephone and electric light poles with their numerous cross-bars on top as our streets are. The papers that I rec'd from you gave full account of the progress of the election and speeches made by many of the prominent candidates pleased me very much.

Your address with many letters and papers were burnt at the time of the fire. I was puzzled for a long time trying to think of it, the one I wrote on the package of maps was a mere chance from memory, but it proved to be the correct one. We are no longer a Territory, we have gained the desired population and wealth and have been admitted to the Union of States.

My address: Sullivan building, Seattle, Washington, U. S. A.

Thanking you for your kind remembrance, I am,

Yours very truly, JOHN SULLIVAN.

I send by this mail a package of photo views.

[Duly filed April 4, 1902.]

918 COMPLAINANTS' EXHIBIT "Y 9."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 10."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

Imperial hotel, Pembroke street.

CORK, *May 19th*, 1900.

DEAR MRS. LYONS: You will be surprised at knowing that I am in my old home town Cork after an absence of forty one years. I arrived this morning, the first thing I did after registering my name at the hotel was to walk along the Grand Parade and Patric- street,

the streets do not look quite familiar to me as yet but will after a short acquaintance. I have written to Mr. Eugene F. Collins to-day and will have him look after the money in the bank which belong- to my deceased sisters Ellen and Bessie. I am on my way to the Paris Exposition and hope to have the pleasure of seeing you before long.

Yours very truly, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

919 COMPLAINANTS' EXHIBIT "Y 11."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 12."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

Imperial hotel, Pembroke street.

CORK, *May 30th*, 1900.

DEAR MRS. LYONS: Your very kind letter of the 21st. inst. was received. I was very much pleased to know that I am not a stranger in Ireland. I am certainly one in Cork. I have not found any person in Cork that I know. I called on Mr. Breton, Patrick St. jewelers. I found the grand son managing the business—all the rest were dead. I worked for the grandfather. I have been out to the Lakes of Killarney. I will tell you what I think of the lakes when I see you next Saturday.

Yours very truly, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

920 COMPLAINANTS' EXHIBIT "Y 13."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 14."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

Imperial hotel, Pembroke street.

CORK, *June 9th*, 1900.

DEAR MRS. LYONS: Your very kind letter of the 7th inst. also the nice pin you sent me was received. I was agreeable surprised at receiving such a nice present and I will try and keep it ever so long in kind remembrance of you and Thomas. I enjoyed my trip since I left here very much. I had very nice weather but my most enjoyable visit was Belfast. I felt that I was among dear friends and I enjoyed it very much. The money of Bessie's the lawyers got it out of the bank. They will hold it until they advertise in one of the newspapers the probate proceedings in the matter for one month in case any person may have a claim against it as the law requires that. I told the lawyers to send the money to my bankers in Seattle when the month was up, as I did not wish to return to Cork again as it would be an additional time and ex-
921 pense, as I did not know from which point that I would sail for America. I will leave next Monday for Milfordhaven, London and Paris. I will visit Oberamagrau to see the Passion Play. I will stay about a month in Paris, if I should like the place I may return there next winter. I wanted to see Monte Carlo, but I have learned the place is closed for the summer—of course I did not want to blow in any money at gambling, but I have a desire of seeing the place.

Very truly yours, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 15."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 16."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON, U. S. A., *Sept. 12th*, 1900.

DEAR MRS. LYONS: You will see that I am at my old home I arrived here a short time ago after a very enjoyable trip.
922 Business is very good here, my building is full of tenants and of course I am getting a good rental from the building. Other properties which I have are increasing in value. Do not be surprised when I say that I am going to leave for Paris the last of this month. I will spend the winter there. When the weather gets cold in Paris I will go down to Monte Carlo. I just received the money from Wynne & Wynne, lawyers of Cork—one hundred and fifty three pounds 12-10. I brought the enclosures with me from Paris.

I am learning French. Do not be surprised if I should write my next letter to you in French.

Hoping that you are enjoying the best of health.

Give my kindest regards to your children. Their names have slipped my mind at this writing.

I am, very truly yours, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 17."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope.)

Mrs. E. LYONS,
8 *Lower Crescent,*
Belfast, Ireland.

[Duly filed April 4, 1902.]

923 COMPLAINANTS' EXHIBIT "Y 18."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

No. 1. SEATTLE, *Aug. 4th*, 1900.

Received of John Sullivan thirty-five dollars for one week's board lodging & tuition.

$35.00. A. DAUSSAT.

No. —. SEATTLE, *Aug. 11th*, 1900.

Received of John Sullivan thirty-five dollars board lodging & tuition.

$35.00. A. DAUSSAT.

No. —. SEATTLE, *Aug. 18th*, 1900.

Received of John Sullivan thirty-five dollars for board lodging & tuition.

$35.00. A. DAUSSAT.

No. —. SEATTLE, *Aug. 25th*, 1900.

Received of John Sullivan thirty-five dollars for board, lodging & tuition.

$35.00. A. DAUSSAT.

No. —. SEATTLE, *Sept. 1st*, 1900.

Received of John Sullivan thirty-five dollars for board, lodging and tuition.

$35.00. A. DAUSSAT.

No. —. SEATTLE, *Sept. 8th*, 1900.

Received of John Sullivan thirty-five dollars for board, lodging and tuition.

$35.00. A. DAUSSAT.

924 No. —. SEATTLE, *Sept. 15th*, 1900.

Received of John Sullivan thirty-five dollars for board, lodging and tuition.

$35.00. A. DAUSSAT.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 19."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON, U. S. A.,
December 16th, 1896.

Mr. E. F. Collins.

DEAR SIR: Your valued favor of the 30th of November just came to hand. I have enclosed herewith the power of attorney duly signed and acknowledged. I wish to state that my deceased sister Ellen had no children. I am the only heir.

I received a letter from Mrs. E. Lyons a few days ago stating that she had met you in Dublin and that you kindly consented to take up the matter of my deceased sister's estate. Mrs. Lyons is very kind—she has taken quite an interest in this matter for me.

I am pleased to know that you have succeeded in getting the consent of such a responsible gentleman as Mr. Roache to act as administrator in this estate.

I am, most respectfully yours, JOHN SULLIVAN.

925 Address: Sullivan building, Seattle Washington, U. S. A

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 20."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, *July 13th*, 1896.

Mrs. E. Lyons.

DEAR MADAM: Your very kind letter of June 23rd came duly to hand, also four newspapers, which I was very glad to receive. A short time ago I received from you a box of nice handkerchiefs which agreeably surprised and pleased me, and I hope some day to have the pleasure of thanking you personally for your many kind favors to me. You mentioned in one of your letters written a year or more, of money left by Bessie in the Cork savings bank. I wrote to the bank about it, which the enclosed correspondence will show. I did nothing more in the matter since. Now you have kindly mentioned the matter again in your last letter for me to make an effort to claim the money, I have concluded to do so. If you will please send the enclosed correspondence to some gentleman of your acquaintance in Cork who would be willing to act as an administrator in this estate, to call on Mr. Gregg, solicitor, and have the desired papers made out and forwarded to me to be signed.

I am very truly yours, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

926 COMPLAINANTS' EXHIBIT "Y 21."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON, U. S. A., *July 8th*, 1897.

Mr. Eugene F. Collins.

DEAR SIR: You will please inform me what progress have been made in the settlement of the estate of Eliza Sullivan, deceased, and how soon will you be able to close the matter up, and oblige,

Very truly yours, JOHN SULLIVAN.

Address: Sullivan building, Seattle, Washington, U. S. A.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 22."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

SEATTLE, WASHINGTON, U. S. A., *March 1st*, 1899.

Mr. Eugene F. Collins.

DEAR SIR: Your valued favor of Feb. 1st came duly to hand, with power of attorney enclosed. I wish to say that I will defer taking any action in that matter for the present, as I am going to the Paris Exposition. I will make a visit to Ireland, and while there I will look up that matter. I thank you and Mrs. Lyons for the interest you have taken in my behalf.

Most respectfully yours, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

927 COMPLAINANTS' EXHIBIT "Y 23."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

Imperial hotel, Pembroke street.

CORK, *May 19th*, 1900.

Mr. E. F. Collins.

DEAR SIR: I arrived to-day at the Imperial hotel. I would be pleased to see you in regard to my deceased sister's estate.

Yours truly, JOHN SULLIVAN.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 24."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

COMPLAINANTS' EXHIBIT "W." Daniel Swiney, U. S. Consul for Cork, Commissioner.

Sullivan building.

SEATTLE, WASHINGTON, U. S. A., *Nov. 19th*, 1895.

Mr. Robert Gregg.

DEAR SIR: I wish to correspond with you in regard to an estate left by my sister, Eliza Sullivan, deceased. The estate consists of £15-10-4, in the Cork savings bank. Mr. H. Carr Cave gave me your address. You will please let me know what the cost will be for administration in the above estate, as near as you can give it,
928 such as solicitor, administrator and court fees, and whether I can name who the administrator is to be. All information in regard to the above matter will be thankfully received.

Most respectfully yours, JOHN SULLIVAN.

I have enclosed some old stamps for Mr. H. Carr Cave's boy, which you will please send him.

J. S.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 25."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington in and for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

Your petitioner respectfully shows unto the court that John Sullivan, late of the city of Seattle, in said county, departed this life in said city on the — day of September, 1900, and that he left property in said county, the description and amount of which is unknown to your petitioners.

That said deceased died intestate; and that it is necessary that an administrator be appointed by this court to take charge of and settle the estate of said deceased.

That your petitioners are creditors of said deceased, and that they are informed and believe that said deceased left no heir surviving him.

929 Your petitioners further show unto the court that I. D. McCutcheon is a resident of said city and county, and that he is a fit person to appoint administrator of said estate, and as such creditors, your petitioners respectfully request the court to appoint said I. D. McCutcheon administrator of said estate.

Dated Oct. 5, 1900.

LOUIS DAUSSAT.
MARIE CARRAU.

In the Superior Court of King County, State of Washington.

Case No. —.

STATE OF WASHINGTON, }
County of King, } ss:

Louis Daussat, being first duly sworn, upon oath says: That he is one of the petitioners in the foregoing petition: that he has heard the foregoing petition read, knows the contents thereof, and that he believes the same to be true.

LOUIS DAUSSAT.

Subscribed and sworn to before me this 6th day of October, A. D. 1900.

N. S. PETERSON,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed Oct. 8, 1900.

GEO. M. HOLLOWAY, *Clerk.*

930 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, }
County of King, } ss:

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original petition for appointment of administrator and affidavit in the above-entitled matter as the same appears on file in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court, at my office at Seattle, this 9th day of January, 1902.

[Seal Superior Court.]

C. A. KOEPFLI, *Clerk*,
By E. B. ERWIN, *Deputy*.

[Duly filed April 4, 1902.]

931 COMPLAINANTS' EXHIBIT "Y 26."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for the County of King. In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

Claim of Margaret Lowney and Michael Sullivan.

To the honorable the judge of the above-entitled court:

Come now Margaret Lowney, *née* Sullivan, and Michael Sullivan, and hereby enter their appearance in the above-entitled proceeding, and state:

I.

That the said Margaret Lowney, *née* Sullivan, and Michael Sullivan, are both residents of the Parish Cloune, Barelavin, County Cork, Ireland, the said Margaret Lowney being about sixty-five years of age, and the said Michael Sulli-an being about sixty-four years of age.

II.

That the said Margaret Lowney and Michael Sullivan are the brother and sister, respectively, of the said deceased, John Sullivan, and are his next of kin and heirs at law; that other than the said
Margaret Lowney and Michael Sullivan, the said deceased,
932 left no heirs at law.

III.

That at a proper time, to be fixed by this court, the said Margaret Lowney and Michael Sullivan will present proofs of their heirship to the above-entitled court.

Wherefore the said Margaret Lowney and Michael Sullivan pray that upon the close of the administration of said estate, and upon the payment of the debts of said deceased and of the expenses of

administration, the estate of said deceased be distributed to the said Margaret Lowney and Michael Sullivan share and share alike.

PRESTON, CARR & GILMAN,
Attorneys for Margaret Lowney and Michael Sullivan.

STATE OF WASHINGTON, } ss:
County of King, }

Michael Lowney, being first duly sworn, upon oath deposes and says: That he is the agent of the said Margaret Lowney and Michael Sullivan, and makes this claim of heirship in their behalf; that he has read the foregoing statement, knows the contents thereof, and believes the same to be true.

MIKE LOWNEY.

Subscribed and sworn to before me this 6th day of March, 1901.

JAMES B. MURPHY,
Notary Public in and for the State of Washington, Residing at Seattle, in said State.

Filed March 6, 1901.

C. A. KOEPFLI, *Clerk.*

933 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original claim of Margaret Lowney and Michael Sullivan in the above-entitled matter as the same appears on file in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court, at my office at Seattle, this 15th day of January, 1902.

[Seal Superior Court, King County.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

934 COMPLAINANTS' EXHIBIT "Y 27."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for King County.

In the Matter of the Estate of JOHN SULLIVAN, Deceased—TERENCE O'BRIEN, Administrator.

Notice and Entry of Appearance of Next of Kin of John Sullivan.

Now come the following-named persons, who are the next of kin of John Sullivan, deceased, who died in Seattle, State of Washington, on the 26th day of September, 1900, to wit: Jeremiah Sullivan, James Sullivan, and Margaret Mahony, widow, all of Caherberg, Roscarbery, Ireland; and Catherine Sweeney, spinster, John Sweeney, Patrick Sweeney, Daniel Sweeney and Michael Sweeney, all of Burgitia, Rosscarbery, Ireland, and enter their appearance in these proceedings, and request that all pleadings and papers affecting said estate of John Sullivan, deceased, be served on Wilshire & Kenaga, at Nos. 716–717 New York block, Seattle, Washington, who are their attorneys.

The above-named persons hereby notify Terence O'Brien, administrator, of the estate of John Sullivan, deceased, that they are the next of kin of said deceased, John Sullivan, and notify said
935 administrator not to pay out or distribute any of the proceeds of said estate without an order of this honorable court.

Dated this 4th day of March, 1901.

By WILSHIRE & KENAGA,
Attorneys for Next of Kin of John Sullivan, Deceased.

Offices: No. 716–717 New York block, Seattle, Washington.

Filed Mar. 4, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King,

do hereby certify that I have compared the foregoing copy with the original notice and entry of appearance of next of kin of John Sullivan in the above-entitled matter as the same appears on file in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and
936 affixed the seal of said superior court at my office *office* at Seattle this 15th day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk*,
By E. B. ERWIN, *Deputy*.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 28."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for King County Probate Department.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

Petition.

The petition of Marie Carrau respectfully represents:

I.

That John Sullivan died on the 26th day of September, A. D. 1900, at Seattle, county of King, State of Washington, and was at the time of his death a resident of the city of Seattle, county of King, State of Washington; and was at the time of his death of sound mind and disposing memory; that he left a last will and testament, to wit, a nuncupative will; that six (6) months have not
937 elapsed since the testamentary words were spoken by decedent; that said testamentary words, or the substance thereof, were addressed to Louis Daussat, Augustine Daussat and Hermance Carrau, at about 11 o'clock p. m. of the 25th day of September, 1900, and were as follows:

"I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister Marie Carrau. I am sick and we know not what might happen."

That said testamentary words were thereafter reduced to writing, which said writing accompanies this petition; that such testamentary words were spoken and such nuncupative will was made at the time of the last sickness and at the dwelling-house of the deceased,

wherein deceased had resided for more than ten (10) days immediately preceding his said death, and the speaking of said words.

SEATTLE, WASH., *Sep. 25th*, 1900, 11:30 p. m.

Mr John Sullivan spoke to Louis Daussat, Augustine Daussat and Hermance Carrau at about 11 o'clock p. m. this day the words: I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars to be the money and property of your sister Marie Carrau. I am sick and we know not what might happen.

AUGUSTINE DAUSSAT.
LOUIS DAUSSAT.
HERMANCE CARRAU.
MARIE CARRAU.

938 II.

That said will was made at about the hour of 11 o'clock p. m. on the 25th day of September, 1900, the night before decedent's death, and at the time of his last sickness and while decedent was in the actual contemplation, expectation and fear of death, and at the time of pronouncing said testamentary words constituting such nuncupative will as aforesaid, the decedent did bid the three (3) following names persons who were then and there present by and at his request to bear witness that such was his will, to wit: Louis Daussat, Augustine Daussat and Hermance Carrau; that decedent had been sick for several days immediately preceding the making of said will and was still sick at said time, and in his last sickness as aforesaid, and died within twelve (12) hours after said will was made, published and declared.

III.

That no one was named in said will as the executor thereof; that decedent was a bachelor, and left no widow, heirs, or next of kin so far as known to your petitioner.

IV.

That deceased left personal property of the value of fifty thousand dollars ($50,000.00), and real estate in said county of King of the probable value of four hundred and fifty thousand dollars ($450,000.00).

939 Wherefore, petitioner prays that said will be admitted to probate.

MARIE CARRAU,
Proponent and Petitioner.

W. F. HAYS AND
J. P. HOUSER AND
PRATT & RIDDLE,
Attorneys for Petitioner.

STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn, on oath, deposes and says: That she is the proponent and petitioner in the above-entitled proceeding, that she has heard the foregoing petition read, knows the contents thereof, and that she knows the same to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 8th day of March, 1901.

ROB. F. D. BOOTH,
Notary Public in and for the State of Washington, Residing at Seattle.

Filed Mar. 8, 1901.

C. A. KOEPFLI, *Clerk.*

940 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original petition for probate of nuncupative will and affidavit and nuncupative will in the above-entitled matter, as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 9th day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

941 COMPLAINANTS' EXHIBIT "Y 29."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for King County.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. —.

Order for Citation.

And now, on, to wit, this 8th day of March, 1901, upon application duly made, it is hereby ordered that a citation issue herein to the sheriff of King county, Washington, directing said sheriff to cite the widow and next of kin of said John Sullivan, deceased, if any may be found, to be and appear before our superior court at the courtroom thereof, on Friday, the 8th day of March, 1901, at the hour of 10 o'clock a. m., at which time and place will be heard the petition for the probating of the will of said deceased.

BOYD J. TALLMAN, *Judge.*

Filed March 8, 1901.

C. A. KOEPEL, *Clerk.*

942 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original order for citation, in the above-entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 9th day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

943 COMPLAINANTS' EXHIBIT "Y 30."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

Not found.

STATE OF WASHINGTON, } ss:
County of King, }

I, Ed. Cudihee, sheriff of King county, State of Washington, do hereby certify that I received the annexed citation on the 8th day of March, 1901, and after diligent search was unable to find the widow or next of kin of John Sullivan, deceased, or any of them, in King county.

Dated this 8th day of March, 1901.

ED. CUDIHEE,
By WM. CORCORAN, *Deputy.*

Sheriff's fees: Travel, .20.

In the Superior Court of the State of Washington for King County.
In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. —.

Citation.

To the sheriff of said King county, Washington:

In the name of the State of Washington you are hereby commanded to cite the widow or next of kin of the deceased to
944 be and appear before the said superior court at the courtroom thereof, in the city of Seattle, in said King county, on Friday, the 8th day of March, 1901, at the hour of 10 o'clock a. m., at the courtroom of said court, at which time and place will be heard the petition for the probating of the will of said deceased, and the issuance of letters testamentary thereon.

And caution the said widow or next of kin that they fail not so to be and appear at their peril.

Witness, the Honorable Boyd J. Tallman, judge of our said superior court, and the seal of the said court hereto affixed this 8th day of March, 1901.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI,
County Clerk and ex-Officio Clerk of the Superior Court of King County, State of Washington,
By F. D. CLEAVES, *Deputy.*

Filed March 8, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of John Sullivan, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing
945 copy with the original citation and sheriff's return in the above-entitled matter as the same appears on file in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 9th day of January, 1902.

[Seal Sup. Ct., King County.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 31."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington in and for King County. In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No.— .

Certificate of Probate of Will.

COUNTY OF KING, } ss:
State of Washington, }

I, Boyd J. Tallman, judge of the superior court of the State
946 of Washington, for King county, do hereby certify that the annexed instrument, purporting to be the last will and testament of John Sullivan, deceased, to wit, a nuncupative will, was by our said superior court on the 8th day of March, 1901, duly admitted to probate as and for the last will and testament of the said John Sullivan, deceased.

And from the proofs taken and the examination had thereon, the court finds as follows:

That the said John Sullivan died on or about the 26th day of September, 1901, in King county, State of Washington, and at the time of his death was a resident of the county of King in said State of Washington, and a citizen thereof, and left personal and real property in said county and State aforesaid.

That the testamentary words set out in said annexed instrument were spoken and the said nuncupative will was duly made and executed by said John Sullivan on the 25th day of September, 1900, in his lifetime, in the county of King, and State of Washington in the presence of Augustine Daussat, Louis Daussat and Hermance Carrau, witnesses thereto; also that said John Sullivan, deceased, did bid said witnesses, Augustine Daussat, Louis Daussat and Hermance Carrau, and each of them, to bear witness that said words then and there spoken by said deceased and set out in said nuncupative will, as aforesaid, were his will, or to that effect.

That said last will and testament of John Sullivan, deceased, to wit, said nuncupative will, was proved by the above-named
947 witnesses who were present at the making thereof, and the said will was made by the said John Sullivan, deceased, at the time of his last sickness, and at the dwelling-house wherein he had been residing for the space of more than ten days, to wit, for six weeks, or more, before the date of his death, and that said decedent died within twelve hours from the time of making his said will.

That said nuncupative will was offered for probate and duly admitted and proved as and for the last will and testament of the said John Sullivan, deceased, within six months after the speaking of said testamentary words, and the making of said will, and the words of said will, or the substance thereof, were duly committed to writing before the same were offered for probate herein.

That the said decedent at the time of executing the said will was above the age of majority, to wit, of the age of about sixty years, and was of sound and disposing mind and not under duress, menace, fraud, nor undue influence, nor in any respect incompetent to devise and bequeath his estate.

In witness whereof I have hereunto set my hand and cause the seal of the said superior court to be hereunto affixed this 8th day of March, 1901.

BOYD J. TALLMAN,
Judge of the Superior Court of the State of Washington for King County.

Attest:

C. A. KOEPFLI,
Clerk of said Court,
By F. D. CLEAVES,
Deputy Clerk.

Filed Mar. 8, 1901.

C. A. KOEPFLI, *Clerk.*

948 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of Washington, for the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original certificate of probate of will in the above-entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 9th day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

949 COMPLAINANTS' EXHIBIT "Y 32."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for King County.
In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. —.

Decree Admitting Will to Probate.

Marie Carrau having on the 8th day of March, 1901, in person and by her attorneys, Messrs. Hays, Houser, and Pratt & Riddle submitted to and filed in this court a certain document in writing of a testamentary nature, being the words and the substance thereof spoken by the deceased, John Sullivan, purporting to be the last will and testament of the said John Sullivan, deceased, to wit, a nuncupative will, and also her petition praying among other things for the admission to probate of the said document as and for the last will and testament of the said deceased.

And this court having duly order- a citation issue to the widow or next of kin of the deceased, and said citation having been

issued, and by the sheriff of King county, Washington, duly made return thereof, by which return it appears that there is no widow or next of kin of the said deceased, John Sullivan.

Now on this the 8th day of March, 1901, the hearing of the said petition comes on regularly before the court in open session;

950 And it fully appearing to the satisfaction of the court that the said petition sets forth all the facts necessary to give this court jurisdiction over the estate of the said deceased and jurisdiction to admit to probate the last will and testament of the said deceased, and witness- having been examined under oath, and their testimony taken and reduced to writing in open court, to wit, the testimony of Louis Daussat, Augustine Daussat, Hermance Carrau, and Marie Carrau, the petitioner, all said witnesses being over the age of 21 years at the time of the speaking of the words constituting said nuncupative will set forth in the petition herein, and the same having been filed and the evidence being closed, and the matter having been duly and regularly and finally submitted to the court for consideration and decision, and all and singular the law and the premises being now by the court here fully understood and duly considered, the court finds the facts applicable to this matter to be as follows: That the said John Sullivan died testate on the 26th day of September, 1900, at No. 1413 Seventh avenue, Seattle, Washington;

That at the time of his death the said deceased was a resident and had been for a period of more than 10 days in said house as his dwelling house immediately preceding the date of his said death, and left estate in said King county subject to administration in the State of Washington;

That the said document purporting to be the last will and testament of said John Sullivan, deceased, was duly executed by him in his life time, to wit, on the 25th day of September, 1900, as

951 about the hour of 11 o'clock p. m. of said day, and during his last illness, and from which his death ensued, in the presence and hearing of the said Louis Daussat, Augustine Daussat and Hermance Carrau; each and all of said witnesses being competent persons to witness the making of said will and the words by the deceased then and there spoken, and which words were afterwards reduced to writing by the said witnesses, and by them duly subscribed, and also that the said deceased then and there, in the presence of the said witnesses published the said document and will as, and declared the same to the said witnesses to be his last will and testament, which was by said witnesses duly attested and signed by each of them on the following day after the speaking of said words, and the pronouncing of the same, or to that effect; and that the said deceased did bid said witnesses then present to bear witness that such was his will;

That said will was made at the time of the last sickness, and where he had been residing for the space of more than 10 days previous to the pronouncing thereof;

That the said deceased at the time of executing the said last will

and testament was over the age of majority, to wit, of the age of about 60 years, and was of sound and disposing mind and memory, and not acting under duress, menace, fraud, nor any undue influence whatsoever, nor in any respect was he incompetent by last will to devise and bequeath his estate;

That Marie Carrau is named in the said will as the sole legatee thereof, and of the entire estate of the deceased, John Sullivan, by the terms of said will:

952 Now, therefore, by reason of the law and facts aforesaid, it is considered, ordered, adjudged and decreed by the court here, that the jurisdiction to admit to probate the last will and testament of the said deceased, appertains unto our said superior court; that the said document submitted for probate on the 8th day of March, 1901, is the last will and testament of the said John Sullivan, deceased, and that the same was properly and legally executed, and is entitled to be, and is, hereby admitted to probate;

That a certificate of probate thereof be granted, and that the said last will and testament, together with said certificate, be duly entered of record in the records of wills in this court, as provided by law.

Done in open court this 8th day of March, 1901.

BOYD J. TALLMAN,
Judge of said Superior Court of King County,
State of Washington.

Filed Mar. 8, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } *ss:*
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the

953 county of King, do hereby certify that I have compared the foregoing copy with the original decree admitting will to probate in the above-entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 9th day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

954 COMPLAINANTS' EXHIBIT "Y 33."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington in and for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

JOHANNA CALLAGHAN and EDWARD CORCORAN, Petitioners,
vs.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Respondents. } No. —.

Petition Contesting the Pretended Nuncupative Will of John Sullivan, Deceased.

To the honorable judges of the above entitled court:

Your petitioners, Johanna Callaghan and Edward Corcoran, respectfully make and file this their petition to your honorable court, hereby contesting the validity of the pretended nuncupative will of the above-named John Sullivan, deceased, alleged to have been made on the 25th day of September, 1900, at 11 o'clock p. m., which was filed in the above-entitled court on the 8th day of March, 1901, as hereinbefore more fully set forth, and your petitioners re-
955 spectfully set forth in this their said petition, the facts by reason whereof they and each of them are persons interested in said pretended will and in the estate of said deceased, and their objections and exceptions to said pretended will, and allege and show the same to your honorable court as follows, to wit:

1. That heretofore, to wit, on the 26th day of September, A. D. 1900, the said John Sullivan, died at the city of Seattle, county of King, State of Washington, and was at the time of his death a resident of said city and county and at the time of his death left valuable real and personal property situated in the city and county aforesaid, among which said real estate is the following, to wit: lot 4 and 5 in block 5, Boren & Denny's addition to the city of Seattle; that said real estate is very valuable and has a brick and stone building thereon, known as the Sullivan block, which said land, including the improvements, is of the value of four hundred and fifty thousand dollars and upwards; that the personal property at the time of said deceased, consisted principally of money, to the amount of about twenty thousand dollars ($20,000.00).

2. That since the death of said deceased, the rents, issues and profits derived from the real estate of which said John Sullivan died

possessed, have been collected by the administrator hereinafter named, and aggregate about twenty-five thousand dollars ($25,000.00) per annum.

3. That the said John Sullivan left no widow, child or children, and no father or mother, nor brother or brothers nor sister or
956 sisters, and no ancestor lineal or collateral, nor any lineal descendant, and no heir or next of kin other than your petitioners, who are respectively the first cousins of the said John Sullivan, deceased, and the only first cousins of the said John Sullivan, deceased, and who are the only heirs at law and next of kin of the said John Sullivan deceased.

4. That heretofore, to wit, on the — day of November, 1900, upon the *petition* of this honorable court that the said John Sullivan died intestate and without heirs, this honorable court duly and regularly appointed the said respondent Terence O'Brien as administrator of the estate of John Sullivan, deceased, who thereafter duly qualified as provided by the laws of the State of Washington, and who ever since said time has been and still is the duly appointed, qualified and acting administrator of said estate and his said letters of administration are in full force and unrevoked.

5. That heretofore, to wit, on or about the 5th day of October, 1900, the said respondent Marie Carrau and one Louis Daussat filed in this court their petition duly verified, by which they showed that the said John Sullivan died intestate and alleged that they were creditors of the said deceased, and alleged that they were informed and believed that said deceased left no heirs surviving him, and prayed that I. D. McCutcheon, Esq., be appointed administrator of said estate; that said petition was denied by the court, and said Terence O'Brien was thereafter duly appointed administrator of the said estate as aforesaid.

957 6. That notwithstanding the allegation contained in the said petition of the said Marie Carrau and Louis Daussat, that the said John Sullivan died intestate, the said Marie Carrau on or about the 8th day of March, 1901, filed in this court her petition, under oath, alleging among other things that said John Sullivan deceased was a bachelor and left no widow, heirs or next of kin so far as known to said petitioner; that the said deceased left a last will and testament, to wit, a nuncupative will, whereby the said Sullivan willed all of his property and personal effects to the said Marie Carrau, and that the deceased left personal property of the value of fifty thousand dollars, and real estate in said county of King of the probable value of four hundred and fifty thousand dollars.

7. That thereafter, on the said 8th day of March, 1901, an order for citation was made by this honorable court on application of said Marie Carrau, directing the sheriff of said King county to cite the widow and next of kin of said John Sullivan deceased, if any might be found, to appear at the said superior court at the court-room thereof on the same day the order was made, to wit; on Friday the 8th day of March, 1901, at the hour of 10 o'clock, a. m. of said day

at which time and place would be heard the petition for the probate of the said alleged nuncupative will; that the sheriff of said King county immediately upon receipt of said citation, returned the same into said court, certifying that he received the same on the said 8th day of March, 1901, and after diligent search was unable to
958 find the widow or next of kin of said John, Sullivan, deceased, or any of them, in said county; that said citation was returned as aforesaid, without being published or posted for a period of ten days after the same was issued, or for any length of time, or at all, and this honorable court thereupon, on the said 8th day of March, 1901, made an order admitting the said alleged nuncupative will to probate, and issued a certificate of probate thereof.

8. Your petitioners further allege that the said John Sullivan at the time of his death, had no power or authority to make a nuncupative will of the estate of which he died seised or possessed, or any part thereof; that there was not at the time said nuncupative will is alleged to have been made by said John Sullivan, or at the time of his death, and there is not now, any law authorizing the making of a nuncupative will where the property bequeathed exceeds the sum of two hundred dollars in value, nor was there at any time any law authorizing the disposition of real estate by a nuncupative will; that the alleged devisee and legatee under said alleged nuncupative will, the said Marie Carrau, was at the time of the making of said alleged nuncupative will and at the time of the death of the said John Sullivan, an alien and a subject of the Republic of France. And your petitioners further show that the said John Sullivan never made, or attempted to make, publish or declare the said pretended nuncupative will as was and is well known to said Marie Carrau and those purporting to have witnessed the pretended execution thereof; that the said Sullivan, at the time of his death, was a bach-
959 elor, of the age of sixty years, and upwards; that for a few weeks prior to his death he had been living in the house occupied by the said Louis Daussat, who was and is a relative of the said Marie Carrau, who also resided in the house occupied by the said Louis Daussat, and who had been teaching the said John Sullivan the French language; that the said Marie Carrau, and Louis Daussat and Augustine Daussat and Hermance Carrau, all of whom were and are closely related to said Marie Carrau, some time after the said Marie Carrau had filed her said petition representing to the probate judge of this court that the said John Sullivan died intestate, and after she had failed to secure the appointment of the person whom she requested the court to appoint as administrator of said estate, unlawfully and fraudulently combined and confederated together for the purpose of securing to themselves all of the real and personal property of which the said John Sullivan died seised and possessed, and to that end they falsely and fraudulently represented to this court that the said John Sullivan, shortly prior to his death, made and published the said pretended nuncupative will, well knowing at said time that said representations were false and

fraudulent, and that the said John Sullivan had at no time made, published or declared the said pretended nuncupative will, but, on the contrary, that he had died intestate, as the said Marie Carrau and Louis Daussat had theretofore represented to this court.

9. And your petitioners further show unto this honorable court that the said John Sullivan, at the time said pretended nun-
960 cupative will is alleged to have been made, was not in his last sickness; that no proof of said pretended nuncupative will was offered within six months after it is alleged the said John Sullivan spoke said alleged testamentary words, nor was said pretended nuncupative will delivered unto the superior court of the State of Washington, in and for the county of King, or any other court, within thirty days after the said Marie Carrau had knowledge of the death of the said John Sullivan.

10. Your petitioners further show that this contest is filed without prejudice to the suit, which your petitioners have heretofore on this day filed in the circuit court of the United States for the district of Washington, northern division, against the said Terence O'Brien, as such administrator, and the said Marie Carrau, and without waiving any claim to the relief therein prayed for.

Wherefore your petitioner- pray*s* that the probate of the said alleged nuncupative will be revoked, set aside, and held for naught, and be declared by this court to be void and without authority of law, and that the said pretended nuncupative will be rejected; that a citation be issued to said Terence O'Brien, as administrator of the said estate, and to the said Marie Carrau, named in said al-
961 leged nuncupative will, requiring them to appear before this court on a day therein specified, to show cause why this petition should not be granted.

JOHANNA CALLAGHAN,
EDWARD CORCORAN,
By PILES, DONWORTH & HOWE AND
C. H. FARREL, *Their Attorneys.*

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Attorneys for Petitioners.

STATE OF WASHINGTON, } ss:
County of King, }

C. H. Farrel, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners herein; that he has read the within and foregoing petition, knows the contents thereof, and believes the same to be true.

C. H. FARRELL.

Subscribed and sworn to before me this 20th day of June, 1901.

[NOTARIAL SEAL.] SCOTT CALHOUN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed June 20, 1901.

C. A. KOEPFLI, *Clerk.*

STATE OF WASHINGTON, }
County of King, } ss:

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county
962 of King, do hereby certify that the foregoing is a full, true and correct transcript of the petition of Johanna Callaghan and Edward Corcoran in cause 32,664, in the matter of the estate of John Sullivan, deceased, as the same appears on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 14th day of January, A. D. 1902.

[Seal Sup. Ct. King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN,
Deputy Clerk.

[Duly filed April 4, 1902.]

963 COMPLAINANTS' EXHIBIT "Y 34."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

JOHANNA CALLAGHAN and EDWARD CORCORAN, Petitioners,
vs.
TERRENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Respondents.

Answer.

Comes now Marie Carrau, and for her answer to the petition of above-named petitioners, filed herein, alleges:

I.

Answering paragraph III of said petition, she denies that said petitioners, or either of them, are the first cousins of the said John Sul-

livan, deceased, and denies that they are the only heirs of said John Sullivan, deceased, or any heirs at all, and denies that they are next of kin of the said John Sullivan, deceased, or any kin whatever.

II.

964 Answering paragraph V, she admits filing a petition for the appointment of an administrator in said cause, in the estate of said John Sullivan, deceased; and admits that said petition was denied by the court, and that said Terence O'Brien was appointed administrator of said estate thereafter. But she alleges that the filing of said petition was done under the facts hereinafter more specifically set forth in the affirmative matter set forth in this answer.

III.

She admits the allegations contained and set forth in paragraph VI of said petition.

IV.

Answering paragraph VII of said petition, she denies any knowledge or information with reference to the citation alleged to have been issued in said probate proceedings, and denies any knowledge or information with reference to the service thereof, and as to the manner and time of the service of the same. She admits that said nuncupative will was admitted to probate, and that a certificate of probate was issued thereof.

V.

Answering paragraph VIII of said petition, she denies each and every allegation therein contained, except she admits that at the time of his death the said John Sullivan was a bachelor, of the age of sixty years and upwards, and she admits that for a few weeks prior to his death, he had lived in a house occupied by the said Louis Daussat and this respondent. She admits that she had been teaching the said John Sullivan the French language, and
965 she admits that herself, Louis Daussat, Augustine Daussat and Herma-ce Carrau are closely related.

VI.

Answering paragraph IX of said petition, she denies each and every allegation therein contained.

VII.

Answering paragraph X of said petition, she denies having any information or belief as to the allegation set forth and contained therein.

And further answering said petition of contest, this respondent alleges the facts to be, that this respondent was, at the date of the

death of the said John Sullivan, and had been for many months prior thereto, engaged to become the wife of the said John Sullivan, and the said John Sullivan to become the husband of this respondent; and this answering respondent and the said John Sullivan, had he lived, were to be, and would have been, married at Seattle, Washington, on or about the first day of October, 1900. And that, by reason of such his death and after fully realizing that he was near relation the said John Sullivan, a short time prior to death, devised by nuncupative will, all of his property, both real and personal, to this answering respondent, and in the petition alleged *In re* estate of John Sullivan deceased, No. 3664 of this court; and that immediately after the death of the said John Sullivan, deceased, to whom this respondent was to have been married on or about the first day of October, 1900, she notified and informed her spiritual advisor that the said John Sullivan did make and publish,
966 just prior to his death, his oral will, devising and bequeathing unto this respondent all of his property as aforesaid; and that immediately thereafter this respondent caused to be consulted a regular practicing attorney in the city of Seattle, State of Washington, as to whether or not an oral will was valid and legal under the laws of the State of Washington, such as the said Sullivan made, and as to whether or not such oral will would devise property, both real and personal, or either, under the laws of this State, and was then and there advised by such attorney that an oral will known as a nuncupative will was not valid or legal under the laws of the State of Washington, and that such would not devise either real or personal property, and respondent believing and acting upon such advice and being importuned by persons who claimed to have claims against the estate of the said John Sullivan, and not knowing her real rights in said premises, by reason of said advice, and without knowing its contents, signed a paper or petition requesting the appointment of an administrator of said estate, as alleged in paragraph V of the petition of the petitioners filed herein, and took no steps to establish said nuncupative will, believing that she had no rights thereunder, and that the same was void under the laws of this State, until several weeks thereafter, when she was advised differently, and to the effect that the laws of the State of Washington did authorize and permit the making of a verbal will known as a nuncupative will, and that said will made by said John Sullivan was valid and legal; that such advice was given her by a regular attorney, practicing in the courts of the State of Washington,
967 and the Federal courts of this jurisdiction, residing in the city of Seattle, and that immediately upon receiving the last-named advice, she acted upon the same and caused to be filed a petition to probate said will, as the records in the probate department of this court will disclose, and thereafter caused such nuncupative will to be established therein in all things, according to the law governing the making, proving, establishing and probate of nuncupative wills.

That at said date and up to within a very few moments of the

death of said John Sullivan, he had, and possessed all of his reasoning faculties, and was then and there of the age of — years, and of sound and disposing mind, and fully competent to make and publish such a will, and upon his own motion, without suggestions from any one, and because he loved this answering respondent, and because of the relationship existing between this respondent and the said Sullivan, and because within a brief time they were to be married, the said Sullivan did then and there make said will, devising all of his property, both real and personal, to this respondent, and did then and there bid three persons, who were -ersons other than respondent, to bear witness that such was his will, and that his property, both real and personal, was situate at Seattle, in the State of Washington. That said will was made at the time of the last sickness of the said John Sullivan, and at the dwelling-house of said John Sullivan, where he had resided for more than ten days prior to the making of said will, and that the same was made freely and voluntarily and not under duress, undue influence, or fraud.

968 Wherefore this answering respondent prays that the petition of contestants herein be dismissed, and that the probate of said will heretofore made be confirmed, and that she recover her costs and disbursements herein.

W. F. HAYS,
J. P. HOUSER, AND
J. B. ROBINSON,
Attorneys for Respondent.
—— ——, *Of Counsel.*

STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn on oath, says: That she is the respondent in the above-entitled action; that she has read the foregoing answer, knows the contents thereof, and believes the same to be true.

MARIE CARRAU.

Subscribed and sworn to before me 27th day of Nov., 1901.

NELSON MACPHERSON,
Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

Copy of the within answer received, and due service of same acknowledged, this 27th day of November, 1901.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Attorneys for Plaintiffs.

Filed Nov. 29, 1901.

C. A. KOEPFLI, *Clerk.*

969 STATE OF WASHINGTON, } ss:
County of King, }

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that the foregoing is a full, true and correct transcript of the answer of Marie Carrau, in cause No. 32,664, In the matter of the estate of John Sullivan, deceased, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 14th day of January, A. D. 1901.

[Seal of Sup. Ct. of King Co.]

C. A. KOEPFLI, *Clerk.*
E. B. ERWIN,
Deputy Clerk.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 35."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

Memorandum of agreement made and entered into this 11th day of October, 1901 between Piles, Donworth and Howe and C. H. Farrell, solicitors, of the one part, and Eugene F. Collins, solicitor 19, Eustace street, Dublin, of the other part; whereas, there is at present a suit in the circuit court of the United States entitled
"O'Callaghan and Corcoran" complainants, and "O'Brien
970 and Carrau" defendants in the matter of "The estate of John Sullivan, deceased;" and whereas, the parties hereto of the first part are interested for the complainants above mentioned and have called upon the said Eugene F. Collins to supply them with any information he may now have or may obtain in connection with the said John Sullivan, deceased, which he has agreed to do in consideration of a payment to him of the sum of twenty pounds, and of the future payment of a further sum of twenty pounds in the event of the said complainants establishing their clients' claim to the funds in the above estate, the said Eugene F. Collins undertaking to give evidence himself if called on at an inquiry to be held on or about the 4th November, and also to procure the evidence of Messrs. Wynne & Wynne, solicitors, Cork, and affidavit from Mrs. Lyons of 8 Lower Crescent, Belfast, or her testimony in Belfast.

In witness whereof the parties hereto have set their hands.

PILES, DONWORTH & HOWE AND
C. H. FARRELL,
Per F.
EUGENE F. COLLINS.

Received the sum of twenty pounds,

EUGENE F. COLLINS.

11 Oct. 1901.

(1 penny rev. stamp affixed and canceled.)

[Duly filed April 4, 1902.]

971 COMPLAINANTS' EXHIBIT "Y 40."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for King County, Department No. IV. In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

Petition.

To the honorable the superior court of King county, Washington:

The petition of Marie Carrau respectfully represents:

I.

That petitioner is the sole legatee and devisee of the said John Sullivan, deceased, and that the said John Sullivan, died testate, leaving a will, by the terms of which all of his property and personal effects were conveyed to the petitioner.

II.

That more than six months have elapsed since the issuance of letters of administration upon said estate to Terrence O'Brien. That the said Terrence O'Brien was duly and regularly appointed the general administrator of said estate on the 19th day of November, 1900, and qualified and assumed the duties of his office, and
972 is now the duly qualified and acting administrator thereof; that said estate is but little indebted; that the unsecured debts outstanding against said estate do not exceed five hundred ($500) dollars: and the costs, expenses and charges of administration will probably not exceed the sum of twenty-five thousand ($25,000) dollars.

IV.

That there is a large amount of assets in the hands of said administrator, Terrence O'Brien, to wit, the sum of about twenty thousand ($20,000) dollars cash, and real estate of the value of about four hundred and twenty-five thousand ($455,000) dollars.

Wherefore, petitioner prays that this court make an order distributing to this petitioner her portion of the said estate to which she is entitled upon her delivery to said administrator, Terrence O'Brien, such bond as required by law.

MARIE CARRAU, *Petitioner.*

W. F. HAYS,
J. P. HOUSER, AND
C. A. RIDDLE,
Attorneys for Petitioner.

STATE OF WASHINGTON, } ss:
County of King. }

Marie Carrau, being first duly sworn, on oath says: That she is the petitioner in the above-entitled action, that she read the foregoing petition, knows the contents thereof and believes the same to be true.

MARIE CARRAU.

973 Subscribed and sworn to before me this 21st day of May 1901.

NELSON MACPHERSON,
Notary Public in and for the State of Washington,
Residing at Seattle, Washington.

Filed May 21, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original petition of Marie Carrau in the above-entitled matter as the same appears on file in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 22d day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk*,
By E. B. ERWIN, *Deputy*.

[Duly filed April 4, 1902.]

974 COMPLAINANTS' EXHIBIT "Y 41."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.

In the Superior Court of the State of Washington for King County, Probate Department.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

Petition to Revoke Former Letters, and to Issue Letters with Will Annexed.

Comes now Marie Carrau, by her attorneys, W. F. Hays, J. P. Houser and Pratt & Riddle, and represents and petitions the court as follows:

1st. That heretofore, to wit, on the 26th day of September, 1900, John Sullivan died in King county, State of Washington, leaving an estate therein consisting of both real and personal property of about the value of $500,000; that on the 19th day of November, 1900, on petition duly filed in this court, said petition, amongst other things, alleging that the said John Sullivan died intestate, and that the said John Sullivan left no widow, heirs or next of kin, this court duly appointed one Terrence O'Brien administrator of said estate; that thereafter the said Terrence O'Brien duly qualified as such administrator and has acted as such administrator and is now acting as such administrator, under the
975 orders of this court, that heretofore and after the appointment of said Terrence O'Brien as herein set forth a last will and testament of the said John Sullivan was found, and was duly presented and admitted to probate by this court on the 8th day of March, 1901, that this petitioner is the sole legatee and devisee under the terms of said will; that the value of the personal property is the sum of $25,000; that the rents, issues and profits of the real estate is the sum of $4,000 per month, that a fit and proper person should be appointed administrator with the will annexed.

Wherefore your petitioner prays:

1st. That the administrator heretofore appointed be required to render an accounting in this court of his doings under said appoint-

ment, and of all moneys he has received under said appointment, and that on approval of said accounting by this court the letters heretofore granted be revoked and set aside, and that letters of administration with the will annexed issue herein to a fit and proper person upon his giving bond as required by law.

MARIE CARRAU, *Petitioner.*

W. F. HAYS,
J. P. HOUSER, &
PRATT & RIDDLE,
Attorneys for Petitioner.

976 STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn, deposes and says that she is the petitioner in the above-entitled action; that she has heard the foregoing petition in said matter read, knows the contents thereof and that she believes the same to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 25th day of March, 1901.

ROBT F. BOOTH,
Notary Public in and for the State of Washington, Residing at Seattle.

Filed Mar. 26, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original petition to revoke letters and appoint adm. *c. t. a.* in the above-entitled matter as the same appears on file in
977 my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle this 22d day of January, 1902.

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 42."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for King County.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

Now, on application of the petitioner, Marie Carrau, the sole devisee of the said John Sullivan, deceased, by her attorneys, W. F. Hays, J. P. Houser and C. A. Riddle, for leave to withdraw and dismiss without prejudice the petition heretofore filed by her for the cancellation and annulment of letters of administration heretofore issued to Terrence O'Brien, the now acting and appointed administrator of said estate, and that said withdrawal of said petition may be without prejudice, and the court being in all things fully
978 advised it is therefore ordered that the said petitioner, Marie Carrau, shall, and she is hereby, granted leave to withdraw without prejudice her petition for the cancellation and annulment of the letters of administration heretofore issued to Terrence O'Brien, and now acting and duly appointed administrator of said estate, and said petition is hereby dismissed without prejudice.

Done in open court this 30th day of March, 1901.

BOYD J. TALLMAN, *Judge.*

Filed Mar. 30, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } *ss:*
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original order withdrawing petition of Marie Carrau in the above-entitled matter, as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof, I have hereunto set my hand and
979 affixed the seal of said superior court at my office at Seattle this 22d day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 43."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington in and for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

The above-entitled matter coming on regularly to be heard in open court this 11th day of September, 1901, on the petition of the attorney general of the State of Washington, for and on the part of the State of Washington, heretofore filed in said matter, to wit, on the 20th day of June, 1901, contesting the nuncupative will of John Sullivan, deceased, as probated in this court, and making objections and exceptions to said nuncupative will, and praying that the probate of said nuncupative will be revoked, set aside and held for naught and be declared by this court to be void and without authority at law.

980 The said State of Washington and its attorney general being represented by C. C. Dalton, assistant attorney general, and the said Marie Carrau, by her attorney, W. F. Hays, and the said administrator, by his attorneys, Messrs. Pratt & Riddle.

The attorney general, at this time, moving the court for an order directing the clerk of this court, to issue a citation as prayed for in said petition, to the said Terrence O'Brien and Marie Carrau, requiring them to appear before this court on a day therein to be specified to show cause why said petition should not be granted.

Thereupon the said Marie Carrau objected to the granting of said motion for the reason that the State of Washington was not the next of kin to said deceased nor interested in his said estate nor in said will and therefore had no standing in this court, and therefore no right to file said petition, or to make said motion or appear in said matter.

And the court having listened to argument for and against said objection and being wholly advised in the premises and having duly considered the same does now sustain said objection and adjudge that the State of Washington has no right at this time to make said petition contesting said will and file the same or appear in said matter, and is not a proper party to appear in said probate proceeding to contest said will or for any purpose whatever, and the court does now refuse to consider said petition, and that said petition be stricken from the files.

To all of which order of the court the State of Washington takes an exception which exception is allowed.

981 And further objected to the State being heard to object to the distribution for the reason that one year has not expired

since the will was probated in which heirs might appear to contest the will and claim heirship.

Done in open court this 13th day of Sept. 1901.

BOYD J. TALLMAN, *Judge.*

Filed Sept. 13, 1901.

C. A. KOEPFLI, *Clerk.*

In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original order requiring State of Washington to appear in said matter in the above-entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof I have hereunto set my hand and
982 affixed the seal of said superior court at my office at Seattle this 22d day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 44."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington in and for King County. In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

Order.

The above-entitled matter coming on to be heard on the 26th day of September, 1901, upon the petition of Terence O'Brien, administrator of the estate of John Sullivan, deceased, for instructions filed herein on said date, administrator appearing by his attorneys, Pratt & Riddle, and Messrs. Piles, Donworth & Howe appearing in oppo-

sition to said petition, on behalf of one Hannah Calligan and one Edward Corcoran, and it appearing to the court that the said Hannah Calligan and the said Edward Corcoran, aliens and
983 subjects of the King of the Kingdom of Great Britain and Ireland, have heretofore instituted as complainants an action in the circuit court of the United States, for the district of Washington, northern division, ninth circuit, holding terms at Seattle, Washington, naming said administrator as defendant, in which said action said complainants, among other things, ask that they be adjudged the only heirs at law of said deceased, and entitled as such to receive the estate of said deceased, and the whole thereof, and that said administrator be required to surrender and distribute to said complainants the whole of said estate and to account to them therefor, and it appearing that the same complainants have heretofore instituted an action in this court in which they have made and designated said administrator a party defendant, and in which said complainants initiate a contest of the nuncupative will of said John Sullivan, deceased, heretofore probated herein.

And it appearing that said administrator has heretofore duly filed in said cause pending in the said circuit court of the United States an answer denying any knowledge or information concerning the matters and things or any of them involved in or arising out of the controversy between said complainants and his co-defendant in said cause, and disclaiming any interest in the subject matter of said suit, except in so far as said administrator is required by law and by the order of this court to discharge his trust as such administrator, and to preserve said estate and obey the orders of this court, the same being the court of his appointment with reference thereto.

984 And it further appearing that said complainants, by their said solicitors, have heretofore, on, to wit, the 5th day of September, 1901, applied to said circuit court for the issuance of an open commission directed to the consul of the United States at Cork and Queenstown, Ireland, or his successor in office, deputy, or representative, to take the testimony or depositions of a large number of witnesses to be called on behalf of said complainants in said cause, and it appearing that said court, upon due hearing of said application, granted the same, and on the 10th day of September, 1901, entered an order in said cause, directing the issuance of an open commission for the taking of such testimony and permitting said administrator, as one of the defendants in said cause, to be present or represented by counsel or solicitor at the taking of said testimony, and to cross-examine witnesses called and testifying on behalf of said complainants, and, if advisable to produce and examine witnesses other than those produced, or examined by complainants.

And it further appearing that a large number of persons claiming to be heirs and next of kin of said deceased, have served notice upon said administrator and written demand claiming said estate, and have, by suits against said administrator, petition to the court, and otherwise, laid claim to said estate and to the whole thereof, and ask

that they be allowed to establish their said claims and that they are the only heirs at law of said deceased and entitled as such to have distributed to them the whole of said estate, and it appearing that said administrator has no means of ascertaining or de-
985 termin*at*ing the merits of such claims except by such investigation thereof, and it further appearing that said administrator, either personally or as such officer, has no interest in the claim of any person or persons claiming said estate, and has no interest in the establishing or failure to establish heirship to the said John Sullivan, deceased, on the part of any person or persons, his only interest being to pay and distribute said estate, as such administrator, under the court's order, to those who are legally authorized to receive the same, and, it appearing that it is in the best interests of and for the benefit of said estate and in the just and proper administration thereof, that said administrator should be present by counsel at the inquiry and investigation to be made in said cause under said open commission, and the court being fully advised in the premises—

Now, therefore, it is hereby ordered, adjudged and decreed that said administrator be, and he is hereby authorized and directed forthwith or seasonably to proceed by C. A. Riddle, his counsel, to the place appointed in said order, and in said commission, for the taking of the testimony or depositions of said witnesses under said open commission issued out of the said circuit court of the United States in the cause in which the said Hannah Calligan and the said Edward Corcoran are complainants and the said administrator is one of the defendants, and that he exercise the right and privilege incorporated in said order to cross-examine said witnesses and, if advisable or necessary to a fair and honest inquiry into the
986 justness and validity of the claims made by said complainants that they are the sole heirs at law of said deceased, to call witnesses other than those produced and examined on behalf of said complainants, and to do and perform whatever is proper and necessary in the premises.

It is further ordered, adjudged and decreed that said administrator be, and he is hereby authorized and directed to pay from the moneys of said estate the necessary expenses and disbursements of his said counsel in the carrying out of this order, and further, that said administrator be and he is hereby authorized and directed to pay forthwith to his said counsel and prior to the departure of his said counsel for the place appointed for the taking of said testimony, from the moneys of said estate, the sum of one thousand dollars, to cover said necessary expenses of said counsel.

And it is further ordered, adjudged and decreed that said administrator and his said counsel be, and they and each of them are hereby directed to keep a correct and just account of all moneys expended by them pursuant to this order, and to take and procure vouchers therefor, whenever practicable, and that the balance remaining from said sum after the payment of necessary expenses

hereunder, be turned back into said estate as the money and property of said estate, and that a report of expenditures so made be subsequently prepared and filed in this court.

Done in open court, this 28th day of September, 1901.

BOYD J. TALLMAN, *Judge.*

Filed Sep. 28, 1901,

C. A. KOEPFLI, *Clerk.*

987 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original order in the above-entitled matter as the same appears on file and of record in my office, and that the said is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said superior court at my office at Seattle, this 22d day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

988 COMPLAINANTS' EXHIBIT "Y 45."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington for the County of King.

UNITED STATES OF AMERICA:

Present: Honorable Boyd J. Tallman, judge.

In the Matter of the Application of MARIE CARRAU, an Alien, to Become a Citizen of the United States of America.

In open court, this 8th day of March, 1901, it appearing to the satisfaction of the court, by the oaths of A. Sweere and W. M. Russell, citizens of the United States of America, witnesses for that pur-

pose, first duly sworn and examined that Marie Carrau, a native of France, arrived in the port of New York in the year 1889, being then less than 18 years of age, and has resided within the limits and under the jurisdiction of the United States five years at least, last past, and within the State of Washington for one year at least, last past, and that during all of said time she has behaved as a woman of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and it also appearing to the court by competent evidence that the said applicant has heretofore and in due form of law, declared her intention to become a citizen of the
989 United States, and now having here, before this court, taken an oath that she will support the Constitution of the United States of America, and that she doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, State and sovereignty whatsoever, and particularly to the Republic of France.

It is therefore ordered, adjudged and decreed by the court, that the said Marie Carrau be, and is hereby, admitted and declared to be a citizen of the United States of America.

STATE OF WASHINGTON, } ss:
County of King, }

I, Geo. Meade Emory, the judge of the superior court of the State of Washington, for the county of King, and presiding magistrate of said court, do hereby certify that the annexed attestation is by the clerk of said court, that said attestation is in due form, that the seal affixed to said attestation is the seal of said court, and that I am the judge of said court and presiding magistrate thereof.

Witness my hand, this 27th day of January, 1902.

GEO. MEADE EMORY,
Presiding Judge of the Superior Court of the State of Washington for King County.

990 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, } ss:
County of King, }

In the Matter of the Application of MARIE CARRAU, an Alien, to Become a Citizen of the United States of America.

I, C. A. Koepfli, county clerk of King county, and *ex officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original record of naturalization of Marie Carrau in the

above-entitled cause as the same appears of record in my office, and the same is a true and perfect transcript of said original and the whole thereof.

Witness my hand and the seal of the said superior court at my office in Seattle, this 24 day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk*,
By E. B. ERWIN, *Deputy*.

[Duly filed April 4, 1902.]

991 COMPLAINANTS' EXHIBIT "Y 46."

Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Superior Court of the State of Washington in and for King County. In Probate.

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

Decree Appointing Administrator.

In the matter of the appointment of an administrator for the estate of John Sullivan, deceased, came on regularly in the above-entitled court, on the 16th day of November, A. D. 1900, upon the petition of the United States Mortgage & Trust Company, Thomas T. Littell, Louis Daussat and Marie Carary, Bonney & Stewart, Thomas P. Brown, Henry W. Miller, and the State of Washington; the first of said petitioners being represented by their attorneys, Messrs. Peters & Powell; the second of said petitioners being represented by Messrs. Craven & Craven, his attorneys, the third of said petitioners being represented by I. D. McCutcheon, Esquire, their attorneys, the fourth of said petitioners being represented by Messrs. Piles, Donworth & Howe, their attorneys, the fifth of said petitioners being represented by Messrs. Clise & King, his attorneys; the sixth of said petitioners being represented by Messrs. Peter-
992 son & Easley, his attorney-; the seventh of said petitioners, to wit, The State of Washington, being represented by the attorney general of the State and Messrs. Allen & Allen, its attorneys.

The court after examining said petitions and files and records in said cause, and having heard the testimony of the respective parties and the argument of counsel, and being fully advised in the law and the premises, finds as follows, to wit:

That on the first day of October, 1900, said petitioner, The United States Mortgage and Trust Company, filed its petition in the above-entitled court, asking for the appointment of George A. Hurd as

administrator of said estate, and that on said 1st day of October, 1900, this court duly made and entered an order fixing the 12th day of October, 1900, in the probate department of the above-entitled court, in the city of Seattle, King county, Washington, as the time and place for hearing said application, and directing the posting of notice thereof according to law, and that notice thereof, sufficient in form and substance was posted in three of the most public places in King county, Washington, for more than ten days prior to the said 12th day of October, 1900.

That on the 3d day of October, 1900, Thomas T. Littell filed in the above-entitled court his petition, praying that letters of administration upon the estate of said decedent issue to him, the said Thomas T. Littell, and that on said 3d day of October, 1900, this court duly made and entered an order fixing the 19th day of October, 1900, as the time for the hearing of said petition, and the
993 probate department of the above-entitled court, in the city of Seattle, King county, Washington, as the place for said hearing, and directing that notice thereof be posted in accordance with law, and that due and proper notice thereof, sufficient in form and substance, was posted in three of the most public places in King county, Washington, more than ten days prior to said 19th day of October, 1900.

That thereafter, on October 8th, 1900, Louis Daussat and Marie Carary filed in the above-entitled court their petition asking that letters of administration upon the estate of said John Sullivan, deceased, issue to I. D. McCutcheon.

That on the 10th day of October, 1900, Bonney & Stewart filed their petition in the above entitled court, praying that letters of administration issue to Terence O'Brien upon the estate of said decedent, and that on said day this court duly made and entered an order fixing November 9th, 1900, as the time, and the probate department of the above-entitled court, at the city of Seattle, King county, Washington, as the place for the hearing of said petition, and directing that notice thereof be given in accordance with law.

That due and proper notice of said petition, sufficient in form and substance, was posted in three of the most public places in King county, State of Washington, more than ten days prior to said 9th day of November, 1900.

That on the 7th day of November, 1900, Thomas P. Brown filed his petition in the above-entitled court, praying that letters of administration upon the estate of said decedent issue to John M. Ryan.

994 That on the 9th day of November, 1900, Henry W. Miller filed in the above-entitled court his petition, praying that letters of administration issue to him, the said Henry W. Miller, upon the estate of said decedent.

That on the 16th day of November, 1900, the State of Washington, by the attorney general of the State, filed its petition in the above-entitled court, praying that letters of administration upon

the estate of said decedent issue to W. G. Armstrong, and further praying that, in case the court should be of the opinion that there should be a joint administration upon said estate, that letters of administration issue thereon to said W. G. Armstrong and the above mentioned George A. Hurd.

The matter of the petition of the United States Mortgage and Trust Company came on regularly for hearing upon said 12th day of October, 1900, and hearing thereon was by the court, in open court, continued to the 19th day of October, 1900.

Upon the 19th day of October, 1900, the petitioners of the United States Mortgage and Trust Company, Thomas T. Littell, Louis Daussat and Marie Carary, came on regularly for hearing, and hearing on each of said petitions was, by the court, in open court, continued to the 9th day of November, 1900.

That on the 9th day of November, 1900, the petitions of said United States Mortgage and Trust Company, Thomas T. Littell, Louis Daussat and Marie Carary, Bonney & Stewart, Thomas P. Brown and Henry W. Miller, came on regularly for hearing, and hearing on each of said petitions was by the court, in
995 open court, continued, upon the application of the United States Mortgage and Trust Company, to the 16th day of November, 1900.

On the 16th day of November, 1900, the petitions of all of the above-mentioned petitioners, together with the petition of the State of Washington, came on duly and regularly in the above-entitled court for hearing.

The court finds that said petitions were sufficient in form and substance, and that notice of the hearing of said petitions, sufficient in form and substance to give the court jurisdiction of the subject matter of this matter, has been posted according to law, and that proof thereof is now on file with the clerk of the above-entitled court.

The court further finds that on the 26th day of September, 1900, John Sullivan, the above-named decedent, died in King county, State of Washington, and that at the time of his death was, and for more than 25 years prior thereto had been, a resident of said King county, State of Washington. That at the time of his death he was the owner of and seised and possessed of both real and personal estate and property situated in said King county, State of Washington. That at the time of his death the said John Sullivan was of the age of about sixty years. That more than forty days elapsed between the death of said John Sullivan and the hearing of the petitions above mentioned on the 16th day of November, 1900, and that no heir or next of kin of said John Sullivan has filed in this cause an application or petition for the appointment of an administrator upon the estate of said decedent. That said John Sullivan
died intestate, and for the purposes of this hearing and ap-
996 pointment, without heirs or next of kin. That the value of the personal property and annual rents, issues and profits of

the real estate of said decedent in the State of Washington does not exceed the sum of $40,000.

That on the 16th day of November, 1900, and prior to the hearing upon said petitions, or any of them, the said petitioners, Louis Daussat, and Marie Carary, through their nominee, I. D. McCutcheon, requested the court in open court, to appoint Benjamin F. Brierly administrator of said estate instead of said I. D. McCutcheon, the said I. D. McCutcheon being present in open court and consenting thereto.

That the United States Mortgage and Trust Company is a corporation, organized and existing under and by virtue of the laws of the State of New York, and qualified to do business in the State of Washington, and that George A. Hurd is its duly appointed agent in the said State for the purpose of accepting service of process. That the laws of the State of New York authorize corporations of the character of the United States Mortgage and Trust Company to act as administrators, executors and guardians of minors and insane persons, and in other fiduciary capacities, and that one of the objects of said corporation set forth in its articles and supplemental articles of incorporation is to act in such capacities.

That George M. Stewart and L. W. Bonney are copartners doing business in the city of Seattle, King county, Washington, under the firm name and style of Bonney & Stewart.

997 That George A. Hurd, Thomas T. Littell, I. D. McCutcheon, Benjamin F. Brierly, Terence O'Brien, John M. Ryan, Henry W. Miller, and W. G. Armstrong, each and all possess the qualifications necessary under the laws of the State of Washington, to act in the capacity of administrator of the estate of decedents therein.

That the United States Mortgage and Trust Company was a creditor of the said John Sullivan at the time of his death to the extent of about $60,000, the indebtedness from said Sullivan to said mortgage company being evidenced by a promissory note in writing and secured by a first mortgage upon what is known as the Sullivan building, and the two lots upon which the same is situated, in the city of Seattle, King county, State of Washington, which is of the value of about $250,000, and said indebtedness is now a valid indebtedness against the estate of said decedent.

That at the time of the death of said John Sullivan he was indebted to Thomas T. Littell in the sum of about $90.00 for services rendered as attorney and agent of said decedent, and the said Thomas T. Littell had in his possession as agent of said decedent at the time of his death the sum of about $1,854.41.

That for the purposes of this hearing, the said John Sullivan, at the time of his death, was indebted to the petitioners Louis Daussat and Marie Carary in a small sum for board and lodging.

That at the time of the death of said John Sullivan he was not indebted to the said Bonney & Stewart, or to either of them. That said Bonney & Stewart, are creditors of the estate of said

998 decedent for a sum in excess of $500 on account of funeral expenses incurred in the burial of said decedent.

That at the time of the death of said John Sullivan he was not indebted to the petitioner Thomas P. Brown in any sum whatsoever, and for the purposes of this hearing the said Thomas P. Brown, as rector of Calvary cemetery in Seattle, Washington, is a creditor of the estate of said decedent in the sum of $60.00.

That the said John Sullivan, at the time of his death, was not indebted to the petitioner Henry W. Miller, nor is his estate indebted to the said petitioner in any sum whatsoever.

That the said John Sullivan, at the time of his death, was not indebted to the State of Washington in any sum whatsoever, nor is the estate of said decedent, indebted to the State of Washington in any sum whatsoever, and the State of Washington is not a residuary or other legatee or devisee of the said decedent.

The court further finds that the claim of the petitioner, Thomas P. Brown, for $60.00 for a lot in Calvary cemetery is also included in the claim of Bonney & Stewart against said estate.

Wherefore it is ordered, adjudged, considered and decreed that Terence O'Brien be, and he hereby is, appointed administrator of the estate of John Sullivan, deceased.

It is further ordered that letters of administration issue to the said Terence O'Brien upon said estate upon his making, executing and filing a bond in the sum of $80,000 in the above-entitled
999 court, with sureties to be approved by one of the judges thereof, and his taking and filing the oath as such administrator required by the laws of the State of Washington.

Done in open court this 19th day of November, A. D. 1900.

WM. HICKMAN MOORE, *Judge.*

Filed Nov. 19, 1900.

GEO. M. HOLLOWAY, *Clerk.*

STATE OF WASHINGTON, }
County of King, } *ss.:*

I, Geo. Meade Emory, the judge of the superior court, of the State of Washington, for the county of King, and presiding magistrate of said court, do hereby certify that the annexed attestation is by the clerk of said court that said attestation is in due form, that the seal affixed to said attestation is the seal of said court, and that I am the judge of said court and presiding magistrate thereof.

Witness my hand this 27th day of January, 1902.

GEO. MEADE EMORY,
Presiding Judge of the Superior Court of the State of Washington for King County.

1000 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, }
County of King, } ss:

In the Matter of the Estate of JOHN SULLIVAN, Deceased. No. 3664.

I, C. A. Koepfli, county clerk of King county, and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original decree appointing administrator in the above-entitled matter as the same appears on file and of record in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said superior court, at my office at Seattle this 24th day of January, 1902.

[Seal Sup. Ct., King Co.]

C. A. KOEPFLI, *Clerk,*
By E. B. ERWIN, *Deputy.*

[Duly filed April 4, 1902.]

1001 COMPLAINANTS' EXHIBIT "Y 47."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Case of HANNAH CALLAGHAN and EDWARD CORCORAN, Complainants,
vs.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, and Marie Carrau, Defendants.

I have been asked as a commissioner in the above case to give my version of a matter, which was in dispute between Mr. Howe, counsel for complainants, and Mr. Donegan, counsel for Marie Carau, defendant. This dispute occurred on the 6th December, on the occasion of my last sitting in court, and arose over the verification of the typewritten report of evidence. Seeing no prospect of an agreement, and wishing to close the taking of evidence, and forward that taken, it was agreed that Mr. Howe and Mr. Donegan should furnish me with a written statement of their version of the matter in dispute, and that I should add my version, and forward all three to the court at Seattle as a supplement.

The above dispute was not on a matter of evidence, but on how

the evidence was taken. The occurrence was this. Mr. Julian, for complainants, was examining Hannah Callaghan, when Mr.
1002 Donegan said, "I object. Mr. Wright is prompting the witness." Mr. Julian said: "He has moved away," referring to Mr. Wright having changed places with Mr. Howe, and moved farther from the witness previous to the objection being made. I saw the change of seats. I heard the objection. I did not hear any prompting then, or on any other occasion, by any solicitor engaged.

I have read the accompanying statement from Mr. Howe and Mr. Donegan, and find in Mr. Donegan's statement that there is extraneous matter introduced, of which I know nothing, and on which I make no remark.

DANIEL SWINEY,
U. S. Consul for Cork, Commissioner.

QUEENSTOWN, IRELAND, *December* 16, 1901.

Mr. Consul, my recollection of what occurred during the examination of Hannah Callaghan is as follows:

Mr. Wright was sitting next to Hannah Callaghan immediately on her right, I sat next to Mr. Wright and Mr. Julian sat next to me on my right. Mr. Julian was examining Hannah Callaghan. Mr. Wright requested me to change places with him, so that he could make suggestions to Mr. Julian. The change of position was made, and I sat next to Hannah Callaghan, and Mr. Wright sat between Mr. Julian and myself.

Mr. Wright made a suggestion to Mr. Julian, Mr. Donegan interrupted and stated, "that the witness being asked a question by Mr. Julian had answered it, that Mr. Wright then gave the name of some person, that the witness changed her answer, that Mr. Wright was either in close proximity to the witness or was prompting
1003 the witness." I do not know which expression was used.

Mr. Julian stated that Mr. Wright had been sitting next to the witness, and changed his position with Mr. Howe, so that Mr. Howe was next to the witness.

Mr. Donegan said that Mr. Wright had supplied the name to the witness or words to that effect. Mr. Julian told *to* Mr. Donegan that he had made a*n* most offensive charge and that he must conduct his case in an inoffensive way, and told Mr. Donegan to take his seat. Mr. Donegan responded not at his dictation, and that he would do his duty.

My recollection is perfectly clear that Mr. Wright in no manner whatsoever prompted the witness, or said anything to the witness and I do not believe that the witness heard what Mr. Wright said to Mr. Julian. It was perfectly apparent to me that Mr. Donegan was making an effort to have it appear on the record that Mr. Wright was trying to aid the witness in giving her testimony when there was no foundation whatsoever for his trying to create such an impression. Mr. Julian in no manner admitted that Mr. Wright had prompted the witness or had said anything to the witness or

that he had said anything to Mr. Julian, while he, Mr. Wright, was sitting next to the witness, but on the contrary Mr. Julian resented Mr. Donegan's statement and called Mr. Donegan's attention to the fact that before Mr. Donegan made his statement Mr. Wright had moved further from the witness than he had theretofore been.

JAMES B. HOWE.

1004 As counsel for Marie Carrau, I find it my duty to object on her behalf to the portion of the record which appears on pages 103 and 104, commencing on page 103 with the question, "Who did she ask to write?" and ending with the observation on page 104 by me "The witness has changed her answer and I ask to have it taken down," and all questions, answers and observations by counsel between said questions and observation, being accepted in evidence as a true record of the proceedings for the reasons hereinafter appearing. Prior to the opening of this commission complainants' counsel were to my certain knowledge made aware that a witness Mrs. Ellen Lyons, of Belfast, who knew the dec'd intimately, met a woman in Cork, who addressed her as follows: "When next you are writing to John Sullivan, remember me to him as his first cousin." When the complainant, Ellen Callaghan, was under examination as a witness by complainants' counsel (Mr. Julian), she was asked as to her recollection of Bessie Sullivan (page 103 of Record); she said: "I spoke to her by word of mouth. I asked her when writing to John to remember Hannah Callaghan to him." Counsel for complainants sought to remove the effect of this slip by asking the witness "who she asked to write." At this moment Mr. Wright, who was sitting near the witness, prompted her in the hearing of everyone present and supplied the name "Mrs. Lyons." Witness then repeated "Mrs. Lyons." I then objected and said "Mr. Wright is sitting close and prompting the witness," whereupon Mr. Julian said "He has moved away." Subsequently the original record and

1005 copies were in the possession of complainants' counsel and they informed me that they had detected some errors and would hand me a copy which they would mark with the proposed alterations to approve of. They did so and I went carefully through same and I agreed to some trifling alterations that were made. There was no alteration made by them or anyone else at the time in the record as it then appeared on pages 103 and 104. When I approved of and returned the copy to complainants' counsel, the questions, answers and statements dealing with the incidents were as follows:

"Q. Who did you ask to write?

"A. Mrs. Lyons. Bessie was in the situation not Ellen, and to Bessie all letters went."

"Mr. DONEGAN: I object. Mr. Wright is sitting very close prompting all the witnesses."

"Mr. JULIAN: He has moved away."

"Mr. DONEGAN: The witness has changed her answer and I ask to have it taken down."

When on the evening of the 5th day of Dec'r, 1901, I next saw the record, new sheets had been typed and replaced the old pages 103 and 104 and are the sheets which now form the pages corresponding to above numbers in the record transmitted. I say that an attempt has been made by complainants' counsel to remove the impression from the minds of the court that any attempt was made to prompt the witness by getting the wording of my objection changed and by leaving out Mr. Julian's remark "He has moved
1006 away." When I discovered the alteration referred to I brought the matter under the notice of the honorable commissioner in the presence of James B. Howe, John B. Wright, Alfred Blake, solicitors, Michael O'Neill, stenographer, and John Creedon, law clerk. The said Alfred Blake and John Creedon, though representing opposite interests to me in the case admitted that in their recollection the words "Mr. Wright is prompting the witnesses" and "He has moved away" as they appear in the first transcript of the report were used by me and Mr. Julian respectively, Mr. Howe and Mr. Wright had a contrary view and the commissioner, the Hon. Daniel Swiney, then stated that he had a distinct recollection that such words as "Mr. Wright is prompting the witness" were used by me and also that Mr. Julian said "He has moved away."

I say that I was notified by said complainants' attorneys at 5 o'clock p. m. on Friday, the 6th inst., of a sitting to be held in Queenstown at said commissioner's office at 10 o'clock on Saturday, the 7th day of December, 1901, and thereupon informed said complainants' attorneys that the hour and time appointed would not suit me and asked them to fix another time, which they consented to do. I may say that I received no further notice in the matter other than a letter from said Mr. Howe informing me that the record had been mailed to America and a letter from the honorable commissioner to the same effect, in which said letter said commissioner informed me that said Mr. Howe had left with him a written statement bearing on the incident herein-
1007 before referred to, to be forwarded by said commissioner to the court together with a statement of the views of said commissioner and this statement of mine, the whole to form a supplement to the record. I say that notwithstanding that complainants agreed to fix a time later than Saturday, the 7th inst., when I could be present at the closing of the commission, they willfully availed of my inability to attend and on that day named and at the hour fixed on said day, viz.: Saturday, the 7th day of December, 1901, they attended on said commissioner and urged him to close said commission notwithstanding the dispute as to the regularity of the record. I therefore respectfully say that said record as forwarded by said commissioner is not a true record of the proceedings as required by the honorable circuit court and I pray that they may so rule and decree.

I charge that the alterations referred to change the sense and convey a different meaning to what was intended. I charge the said

John B. Wright with prompting a witness and I further charge the said John B. Wright and James B. Howe with wrongfully appropriating certain original letters, which letters were written by the deceased John Sullivan to the Mrs. Ellen Lyons hereinbefore referred to, in some of which letters appear matters prejudicial to the case of complainants. Said letters were lent to said complainants' attorneys for the object of their being copied by them and made testimony in the case and though said complainants closed their case without making evidence of said letters or ex-
1008 amining said Mrs. Lyons and were applied to to return the same to the solicitor who lent them for the purposes aforesaid, they refused to give them back. I say that said letters are improperly in their possession and I pray this honorable court to direct that same, and more especially those dated 30th May, 1900, and 12th September, 1900, may be impounded in court in order that they should not remain in the hands of the persons whose interest it is that they should not appear in evidence.

(Signed) HENRY F. P. DONEGAN,
Solicitor and Counsel for Marie Carrau.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 48."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

(Envelope in which was enclosed Complainants' Exhibit "Y 47.")

Consular service U. S. A.
Queenstown, Ireland. (Postage affixed.)

O'Callaghan and
Corcoran,

vs.

O'Brien and Carrau.

No. 943.

A. REEVES AYRES, Esq.,
Clerk Circuit Court,
Seattle, Wash.

[Duly filed April 4, 1902.]

at 12:30 p. m.

Mailed on December 16th, 1901.

Supplementary.

U. S. America.

1009 COMPLAINANTS' EXHIBIT "Y 50."

(Eben Smith, United States Master in Chancery, District of Washington, Northern Division.)

In the Circuit Court of the United States for the District of Washington, Northern Division. In Equity.

HANNAH CALLAGHAN and EDWARD CORCORAN, Complainants,
vs.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants. } No. 943.

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of Queenstown, Cork County, Ireland, Consulate of the United States of America at Cork and Queenstown, Ireland, } *ss:*

I, Daniel Swiney, consul of the United States of America at Cork and Queenstown, Ireland, in the Kingdom of Great Britain and Ireland, the duly appointed commissioner in the above-entitled suit and named in the commission hereto annexed, do hereby certify that after receiving said commission I duly qualified as such commissioner by taking an oath, duly administered, that I would
1010 faithfully perform the duties of such commission to the best of my ability. On the day fixed for the taking of depositions to begin, viz., November 15th, 1901, at 10 o'clock a. m., at the consulate of the United States at Queenstown and pursuant to a notice duly given, I was attended by James B. Howe, one of the solicitors for complainants and by one in behalf of the defendants, and thereupon Edward Corcoran, a witness in behalf of complainants, having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth, gave his testimony appearing in the annexed deposition as given on said 15th day of November, 1901, which said testimony was reduced to writing by me, and on motion of the solicitor for complainants, the taking of said depositions was then adjourned until 10 o'clock a. m., November 18th, 1901, at said consulate at Queenstown, Ireland. At 10 o'clock a. m. November 8th, 1901, at said consulate, pursuant to said adjournment, the taking of depositions in behalf of complainants was resumed, and on said day I was attended by James B. Howe, Esq., and Arthur Julian, Esq., as solicitors for complainants, by C. A. Riddle, Esq., solicitor for Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and by H. P. F. Donegan, Esq., as solicitor for defendant Marie Carrau; by Alfred

Blake, Esq., solicitor for the Riordan claimants, who appeared under the stipulation, a copy of which is hereto annexed, and by Eugene F. Collins, Esq., sol'r for Mary Sullivan, who appeared under the said stipulation. With the consent of all parties I appointed Mr. M. B. O'Niell, a
1011 disinterested person, official stenographer, to take and transcribe the testimony of the witnesses produced and examined, and to report the proceedings occurring in the progress of such examination. Mr. O'Niell was by me first duly sworn to faithfully discharge the duties of a stenographer. He reported the proceedings and wrote down and transcribed the evidence of the witnesses examined on November 18th and 19th, 1901. Adjournments were had from November 15th, 1901, to November 18th, 1901, and from November 18th, 1901, to November 19th, 1901, and from November 19th, 1901, to November 22d, 1901, and from November 22d, 1901, to November 25th, 1901, and from November 25th, 1901, to November 26th, 1901, and from November 26th 1901, to November 27th, 1901, and from November 27th, 1901, to November 28th, 1901, and from November 28th, 1901, to December 7th, 1901, at which time by consent of all parties taking testimony the commission was closed, and I annex hereto the written consent to the closing of the commission. On November 25th, 1901, with the consent of all parties, I appointed Miss Maud McKensie, a disinterested person, official stenographer, to take and transcribe the testimony of the witnesses produced and examined, and to report the proceedings occurring in the progress of such examination. Miss McKenzie was by me first duly sworn to faithfully discharge the duties of stenographer. She reported the proceedings occurring after November 22d, 1901, and wrote down and transcribed the testimony of all witnesses examined after November 22d, 1901. The following named pur-
1012 suant to notice duly given were produced, cautioned, sworn and examined in behalf of complainants, to wit, at Queenstown, Edward Corcoran, of Dublin, Hannah Callaghan of Cork, Revd. John A. Daly of Cork, Elizabeth Cowig or Cowlig of Cork, Denis Riordan of Cork, Ellen B. Davidson of Cork, Rev. Canon Carey of Cork county, Denis Murphy of Cork, Patrick Buckley of Cork, Michael Power or Powell of Cork county, Mary Mahony of Cork county, Michael Cooney of Cork county, John Hilliard of Cork county, Mary Jenkins of Cork, Catherine Riordan, Mary Riordan of Cork, Margaret McGrath of Cork, Daniel Burke of Cork.

Their testimony was by consent of all parties taken down in shorthand by said M. B. O'Niell and all proceedings in connection with the examination of said witnesses were likewise taken down in shorthand by said M. B. O'Niell and the said testimony of each of said witnesses and the proceedings had in connection therewith, were by him transcribed in typewriting and the transcript thereof is hereto annexed. The following-named witnesses pursuant to notice duly given were produced, cautioned sworn, and examined, in behalf of the complainants, to wit, at Cork. Mary Davidson (now

O'Leary) of Cork, Catherine Murphy of Cork, Norah O'Connell of Cork, R. W. Wolseley of Cork, Norah Kiely of Cork, Rev. James Fleming of Cork, Bridget Cronin of Cork, Margaret Cronin of Cork, Robert Gregg of Cork, Michael Regan of Cork. Their testimony was by consent of all parties, taken down in shorthand by said Maud McKensie, together with all proceedings connected
1013 with said testimony and the said proceedings and testimony were transcribed in typewriting by the said Maud McKensie and the transcript thereof is hereto annexed.

The following named witnesses, were produced, cautioned, examined and sworn, and then testified in behalf of the defendant Marie Carrau to wit, at Cork. Henry Carr Cave, Cork, Rev. Canon Carey of Cork county, their testimony and the proceedings had in connection therewith by consent of all parties were taken down by said Maud McKensie and by her transcribed in typewriting, and the transcript thereof is hereto annexed.

The following named witnesses are produced, examined, cautioned and sworn, and then testified in behalf of the Riordan claimants at Cork, under the stipulation above mentioned, to wit, Ellen Begley of Cork, Margaret Riordan of Cork.

No witness other than those above mentioned was sworn and examined. I do also further certify that the annexed transcript is a true and correct transcript of the testimony given by the witnesses examined before me, in the foregoing entitled suit, and that the said transcript contains all the *the* testimony which was given before me, and it shows all the proceedings which were had before me in connection with the giving of said testimony by said witnesses. Complainants' Exhibits "A" to "K" both inclusive, were offered in evidence by complainants, and each exhibit is endorsed with the name of the witness testifying to the same and also with my name, and said exhibits are annexed to said transcript.

1014 Exhibits of Marie Carrau "A" to "D," both inclusive, were offered in evidence by Marie Carrau, the same are identified by having written thereon the name of the witness testifying to said exhibits and also by my name written thereon and said exhibits are attached to said transcript.

Exhibits 1 to 10 were offered in evidence by the Riordan claimants under the stipulation above referred to, and the same are identified by the name of the witness testifying to such exhibit and by my name being also endorsed thereon, and said exhibits are attached to said transcript.

I do also further certify that all parties taking testimony in my presence at the time of the completion of each witness' testimony expressly waived the signature of each and every witness, being written upon the transcript of such testimony, and also expressly waived the signing of such testimony by and the reading over of such testimony to any and all witnesses, and also consented in the foregoing suit and under the said stipulation that I should certify the transcript of said evidence hereto attached and the transcript of the pro-

ceedings had in connection with the taking of said testimony, as the deposition of each of said witnesses and as the proceedings had before me in connection with the taking of said depositions, and I do further certify that the annexed transcript is the true and correct transcript of the stenographic notes of the testimony of each and every witness examined before me under the commission hereto annexed, and under said stipulation and
1015 each and every witness examined before me did depose and swear as set forth in the deposition of such witness hereto attached; and the proceedings set forth in the transcript hereto attached as occurring in connection with the examination of said witnesses are truly and correctly set forth in said transcript, and the exhibits attached to said depositions are all the exhibits offered in evidence before me. I do further certify that I am not and was not of counsel nor am I attorney, or solicitor for any party named in said commission, or for any party to said stipulation nor am I interested in the event of the foregoing suit named in said commission.

In testimony thereof I have hereunto set my hand and affixed my official seal this 7th day of December, 1901, at which time all parties consented to the closing of said commission, and to my authenticating the transcript hereto attached.

[Seal U. S. Consulate.]

DANIEL SWINEY,
Consul of U. S. of America at Cork and Queenstown, Ireland, and Commissioner Named in the Annexed Commission.

A colloquy having taken place between counsel during Hannah Callaghan's examination, Mr. Howe has furnished a statement of his recollection of what occurred. If Mr. Donegan furnishes a statement of his recollection I am to make a statement of mine and the three statements will be forwarded by me, if made, to the
1016 clerk of the court as a supplement to this commission.

DANIEL SWINEY,
Commissioner.

[Duly filed April 4, 1902.]

COMPLAINANTS' EXHIBIT "Y 51."

(Eben Smith, United States Master and Examiner and Special Commissioner.)

In the Superior Court of the State of Washington for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

JOHANNA CALLAGHAN and EDWARD CORCORAN, Petitioners,
vs.
TERRENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Respondents. } No. —.

Amended Answer.

Comes now Marie Carrau by leave of court and for her amended answer to the petition filed herein, alleges:

I.

Answering paragraph III of which petition, she denies that said petitioners, or either of them are the first cousins of the said
1017 John Sullivan, deceased, and denies that they are the only heirs of the said John Sullivan, deceased, or any heirs at all and denies that they are the next of kin of the said John Sullivan, deceased, or any kin whatever.

II.

Answering paragraph V she admits filing a petition for the appointment of an administrator in said cause, in the estate of said John Sullivan, deceased; and admits that said petition was denied by the court, and the said Terrence O'Brien was appointed administrator of said estate thereafter. But she alleges that the filing of said petition was done under the facts hereinafter more specifically set forth in the affirmative matter set forth in this answer.

III.

She admits the allegation contained and set forth in paragraph VI of said petition.

IV.

Answering paragraph VII of said petition, she denies any knowledge or information with reference to the citation alleged to have

been issued in said probate proceedings, and denies any knowledge or information with reference to the service thereof, and as to the manner and time of the service of the same. She admits that said nuncupative will was admitted to probate and that a certificate of probate was issued thereof.

V.

Answering paragraph VIII of said petition, she denies each
1018 and every allegation therein contained, except she admits that at the time of his death the said John Sullivan was a bachelor of the age of sixty years and upwards and she admits that for a few weeks prior to his death, he had lived in a house occupied by the said Louis Daussat and this respondent. She admits that she had been teaching the said John Sullivan the French language, and she admits that herself, Louis Dassaut, Augustine Daussat, and Hermance Carrau are closely related.

VI.

Answering paragraph IX of said petition, she denies each and every allegation therein contained.

VII.

Answering paragraph X of said petition, she denies having any information or belief as to the allegations set forth and contained therein.

And further answering said petition of contest, the respondent alleges the fact to be, that this respondent was, at the date of the death of the said John Sullivan, and had been for many months prior thereto, engaged to become the wife of the said John Sullivan, and the said John Sullivan to become the husband of this respondent; and this answering respondent and the said John Sullivan had he lived, were to be, and would have been married at Seattle, Washington, on or about the first day of October, 1900. And by reason of said relation, the said John Sullivan, a short time prior to his death and after fully realizing that he was near death, devised by nuncupative will, all of his property, both real and personal, to this answering respondent, and in
1019 the petition alleged *in re* estate of John Sullivan deceased, No. 3664 of this court; and that immediately thereafter this respondent caused to be consulted a regular practicing attorney in the city of Seattle, State of Washington as to whether or not an oral will was valid and legal under the laws of the State of Washington, such as the said Sullivan made, and as to whether or not such oral will would devise property both real or personal, or either, under the laws of this State and was then and there advised by such attorney that an oral will known as a nuncupative will was not valid or legal under the laws of the State of Washington, and that such would not devise either real or personal property, and respondent believing and

acting upon said advice, and being importuned by persons who claimed to have claims against the estate of the said John Sullivan, and not knowing her rights in said premises, by reason of said advice, signed a paper or petition requesting the appointment of an administrator of said estate, as alleged in paragraph V of the petition of the petitioners filed herein, and took no steps to establish said nuncupative will, believing that she had no rights thereunder, and that the same was void under the laws of this State, until several weeks thereafter, when she was advised differently, and to the effect that the laws of the State of Washington did authorize and permit the making of a verbal will, known as a nuncupative will, and that said will made by said John Sullivan was valid and legal; and that such advice was given her by a regular attorney, practicing in
1020 the courts of the State of Washington and the Federal courts of this jurisdiction, residing in the city of Seattle, and immediately upon receiving the last named advice, she acted upon the same, and caused to be filed a petition to probate said will, as the records in the probate department of this court will disclose, and therefore caused such nuncupative will to be established therein in all things, according to the law governing the making, proving, establishing, and probate of nuncupative wills.

That at said date and up to within a very few moments of the death of said John Sullivan, he had, and possessed all of his reasoning faculties and was then and there of the age of 60 years and of sound and disposing mind and fully competent to make and publish such a will, and upon his own motion, without suggestions from any one, and because he loved this answering respondent, and because of the relationship existing between this respondent and the said John Sullivan, and because within a brief time they were to be married, the said Sullivan did then and there make said will, devising all of his property, both real and personal, to this respondent, and did then and there *bade* two persons, who were persons other than respondent, to bear witness that such was his will and that his property, both real and personal, was situated at Seattle in the State of Washington. That said will was made at the time of the last sickness of the said John Sullivan, and at the dwelling-house of said John Sullivan, where he had resided for more than ten days prior to the making of said will, and that the same was made freely and voluntarily and not under duress, undue influence or fraud.

1021 Wherefore, this answering respondent prays that the petition of said contestants herein be dismissed and that the probate of said will heretofore made *to* be confirmed and that she recover her costs and disbursements herein.

——— ———,
Attorney for Respondent.
——— ———, *Of Counsel.*

STATE OF WASHINGTON, } ss:
County of King, }

Marie Carrau, being first duly sworn, on oath, says: That she is one of the defendants in the above-entitled action; that she has read the foregoing amended answer, knows the contents thereof and believes the same to be true.

MARIE CARRAU.

Subscribed and sworn to before me this 21st day of February, 1902.

R. W. EMMONS,
Notary Public in and for the State of Washington, Residing at Seattle, Washington.

[Duly filed April 4, 1902.]

1022 DEFENDANT'S EXHIBIT.

(Exhibit offered by defendant Carrau at hearing.)

In the Superior Court for the State of Washington in and for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

EUGENE TIMOTHY SULLIVAN, Petitioner,
vs.
TERRENCE O'BRIEN, as Administrator of the Estate, and MARIE Carrau, Respondents.

In the name of the State of Washington, to Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, respondents above named:

You and each of you are hereby cited and required to appear in the above-entitled court, at Seattle, King county, Washington, on Friday, March 28th, 1902; at ten o'clock a. m., to show cause, if any you can, why the petition of Eugene Timothy Sullivan, filed in this court, duly verified, on March —, 1902, should not be granted, which petition is in words and figures as follows, to wit:

1023 In the Superior Court for the State of Washington in and for the County of King.

In the Matter of the Estate of JOHN SULLIVAN, Deceased.

EUGENE TIMOTHY SULLIVAN, Petitioner,
vs.
TERRENCE O'BRIEN, as Administrator of the Estate, and MARIE Carrau, Respondents.

To the honorable judge of the above court:

Comes now your petitioner Eugene Timothy Sullivan, and for grounds of his relief, shows the following facts.

1. That on December 26th, 1900, John Sullivan died in King county, Washington, while a resident thereof, seized of certain real and personal property situated in said county, and of the estimated value of $450,000, about $400,000 of which is the estimated value of the real estate. And your petitioner alleges that said John Sullivan died intestate but that Marie Carrau, one of the respondents herein alleges and claims that the said Sullivan made a nuncupative will just prior to his death, in which she is the sole legatee of said John Sullivan, deceased, thereunder. And that on March 8th, 1901, the said Marie Carrau filed in the above-entitled court, what purports to be
1024 and is alleged to be said nuncupative will, and that thereafter, on said March 8th, 1901, said nuncupative will was probated and filed for record in said court, where the same is now in full force and effect as a nuncupative will; but which will, this petitioner alleges was a fraud and in fact never made, by the said John Sullivan, deceased, and the words purporting to have been made by the said Sullivan, during his lifetime, were untrue and fraudulent and that such representations by the said Marie Carrau were made for the purpose of defrauding this petitioner and the other heirs of said Sullivan out of their interest in said estate. And your petitioner refers to the records and files in said court in the matter of the estate of John Sullivan, deceased, for fuller description and particulars with reference to said property and said will.

2. That your petitioner alleges the facts to be, that he and a sister, Nora Russel, formerly Nora Sullivan, are each residents and citizens of Thurston county, in the State of Washington, and each a citizen and resident of the United States, and that they have been such residents and such citizens at all the dates herein mentioned and for many years prior to the death of said Sullivan. That the said Sullivan left no wife, mother, or father, sisters or brothers, and no heirs living, except your petitioner and his said sister, to wit, Nora Russel. That your petitioner and his said sister are each first cousins of the said John Sullivan, deceased, by reason of the fact that your petitioner and his said sister are the only

living children of Timothy Sullivan, and Mrs. Gean Sullivan, husband and wife, who were for many years residents and citizens of Tarrey county, Ireland, where each died
1025 many years ago, and now lie buried at Rockfield in said county, and that the said Timothy Sullivan, the father of said Eugene Timothy Sullivan, your petitioner, and said sister, was the brother of the father of John Sullivan, deceased, and your petitioner and his said sister are the only heirs at law of the said John Sullivan, deceased, and as such heirs are entitled to inherit the whole of said estate, so as aforesaid seized by said Sullivan at the date of his death.

3. And for the purpose of contesting the validity of said alleged nuncupative will, your petitioner makes and files herewith, his objections and exceptions to said alleged nuncupative will and the probation thereof, in addition to the facts hereinabove set forth, to wit:

Your petitioner alleges that the said John Sullivan, at the date of his death, and at the date of the making of said alleged nuncupative will, had no authority to make such a will or to thereby devise his said estate or any portion thereof, thereby, and your petitioner alleges that said nuncupative will was never made by the said Sullivan, and the words *con*tributed to him, in connection therewith were never made by the said John Sullivan, and that there was not at that time and there is not now any statute in this State authorizing or empowering any one to devise any portion of their estate by nuncupative will, to exceed the sum of $200, and no statute whatever, or law authorizing or empowering said Sullivan to devise his real estate by a nuncupative will. That the said Sullivan never made or attempted to make, publish or declare said paper,
1026 writing or said alleged nuncupative will, all of which are well known to the said Marie Carrau and all those who were witnesses or purported witnesses to the execution thereof. That at the time of the death of the said John Sullivan he was a bachelor of about the age of sixty years, and that during his last illness he was rooming at the house of one Louis Daussat, who was a brother-in-law of the said Marie Carrau, and that the said Marie Carrau resided in the same building and was engaged in teaching the French language to the said Sullivan and that by reason of her winning ways and her clear intellect and thorough education, she exercised undue influence over the said John Sullivan, during his life-time, covering a period of a few weeks just prior to his death. And that the said Marie Carrau, in exercise of her powers given her by nature and by cultivation, hypnotized the said John Sullivan, and your petitioner alleges that if said nuncupative will was ever made, or attempted to be made or if the said Sullivan ever said any words or made any promise with reference to devising his property to the said Marie Carrau, it was while under the influences above stated, and that the said Sullivan's mind was unable by reason of his illness and old age to resist the influences of

the said Marie Carrau, and that the said John Sullivan, deceased, was incapable of lawfully devising his property at the date when it was alleged such nuncupative will was made. And that such nuncupative will, even if the words alleged to have been uttered by the said Sullivan were uttered, he, the said Sullivan did not know what he was saying or what he was doing,
1027 and the words spoken, if spoken, which your petitioner denies were spoken, are the words of Marie Carrau and not those of John Sullivan, deceased. That the said Marie Carrau caused said nuncupative will to be established and probated with full knowledge of all these facts as hereinabove stated and set forth and that such was done with the intention of defrauding these heirs your petitioner and his said sister out of said estate, and to secure the same for herself, fraudulently and unlawfully. That the said John Sullivan, deceased, was an uneducated, unlettered, and ignorant man, and that the said Marie Carrau took advantage of his condition and ignorance and, if said will was ever made by the said John Sullivan or the words upon which the same is based were ever uttered, it was by reason of the influence of the said Marie Carrau over the said John Sullivan, deceased, wrongfully and unlawfully exercised.

Wherefore, your petitioner prays that the probation of said nuncupative will be revoked, set aside and held for naught. That a citation issue to the said Terrence O'Brien, as administrator and the said Marie Carrau as legatee under said will, and require them to appear before this honorable court, to show cause why said petition should not be granted, and that the estate be given to petitioner and his sister.

EUGENE TIMOTHY SULLIVAN, *Petitioner.*

1028 STATE OF WASHINGTON, } ss:
County of Thurston, }

Eugene Timothy Sullivan, being sworn, says that he is the petitioner in the foregoing petition; that he has heard the same read, knows its contents, and believes the same to be true.

EUGENE TIMOTHY SULLIVAN.

Subscribed and sworn to before me this March 1st, 1902.

MILTON GILUS,
Justice of the Peace for Olympia Precinct,
Thurston County, Washington.

And then and there receive such orders as the court may make concerning the same. This citation is based upon the order of Hon. Boyd J. Tallman, one of the judges, of the above-entitled court, fixing said March 28th, 1902, as the date for you to show cause why such petition should not be granted. A copy of such order is hereto attached and made a part hereof.

In witness whereof, I have hereunto set my hand as the clerk of this court, and affix my official seal hereto, this March 6, 1902.

[Seal of Superior Court.]

C. A. KOEPFLI, *Clerk*,
By D. J. SICKELS, *Deputy*.

1029 In the Superior Court of the State of Washington in and for the County of King.

In re Estate of JOHN SULLIVAN, Deceased.

EUGENE TIMOTHY SULLIVAN, Petitioner,
vs.
TERRENCE O'BRIEN, as Administrator of the said Estate, and Marie Carrau, Respondents.

Upon presentation of the verified petition of Eugene Timothy Sullivan contesting the validity of the nuncupative will of John Sullivan, deceased, probated in this court on March 8th, 1901, and praying for a date to be fixed for the respondents to show cause, why said petition should not be granted, and the court being advised, it is hereby ordered that March 28th, 1902, at 10 o'clock, a. m. be fixed for the hearing of said petition, and that a citation issue out of this court to the respondents, for service by sheriff of King county, Washington, in the usual manner, directing said respondents to show cause at that date, as required by law.

BOYD J. TALLMAN, *Judge*.

1030 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON, *County of King*, } *ss:*

In re Estate of JOHN SULLIVAN, Dec'd.

EUGENE T. SULLIVAN, Pet.,
vs.
ADMINISTRATOR OF ESTATE, ETC., ET AL., Respondents. } No. —.

I, C. A. Koepfli, county clerk of King county and *ex-officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that I have compared the foregoing copy with the original citation and petition in the above-entitled matter as the same appears on file in my office, and that the same is a true and perfect transcript of said original and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said superior court at my office at Seattle, this 4th day of April, 1902.

[Seal Sup. Ct., Co.]

C. A. KOEPFLI, *Clerk*,
By E. B. ERWIN, *Deputy*.

[Duly filed April 4, 1902.]

1031 [Title of Court and Cause.]

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify the foregoing seven hundred and fifty four pages (754) typewritten pages, numbered from 1 to 754, inclusive, to be a full, true and correct copy of all depositions taken, and exhibits introduced in evidence (except Complainant's Exhibits "Y 36," "Y 37," "Y 38," and "Y 39"), before Eben Smith, United States master in chancery and special commissioner, to whom the taking of testimony in said cause was referred by the above-entitled court, as such depositions and exhibits were returned to the above-entitled court by said master in chancery, and as the same are now on file and of record in my office at Seattle, in the northern division of the district of Washington.

I further certify that the foregoing depositions and proofs are the depositions and proofs mentioned and referred to as being
1032 contained and included in volume II in my certificate this day made to volume I of this record on appeal, and are a part of the record on appeal in this cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said circuit court, this 11th day of December, 1902.

[SEAL.] A. REEVES AYRES, *Clerk*,
By R. N. HOPKINS, *Deputy Clerk*.

1033 [Title of Court and Cause.]

Depositions.

Kingdom of Great Britain and Ireland, city of Queenstown, county of Cork, Ireland. Consulate of the United States of America at said place.

Be it remembered, that on this fifteenth day of November, A. D. nineteen hundred and one, at the consulate of the United States of America in the city of Queenstown, county of Cork, in the Kingdom of Great Britain and Ireland, before me, Daniel Swiney, consul of

the United States of America, at said city of Queenstown, Cork county, in said kingdom and in Ireland, the commissioner named in the commission hereto annexed issued in the above-entitled suit out of the above-entitled court, and pursuant to said commission, the order granting the same, and the order changing the date for the taking of said depositions to begin upon from October 15th, 1901, to November 15th, 1901, I at the hour of ten o'clock a. m. of said last-mentioned day, proceeded to execute said commission.

I was attended by James B. Howe, Esq., one of the solicitors of the complainants, and by no solicitor on behalf of the defendants, and thereupon the following proceedings were had and taken before me.

EDWARD CORCORAN, one of the complainants, and a witness on behalf of complainants, a person of sound mind and lawful age, being by me first carefully examined and cautioned, and by me
1034 duly sworn to testify the truth, the whole truth and nothing but the truth, in the above-entitled suit, was then examined by Mr. Howe, solicitor for complainants, and testified as follows:

(By Mr. HOWE:)

Q. What is your name?
A. Edward Corcoran.

Mr. Howe then moved that the taking of the depositions in the above-entitled suit be adjourned until 10 o'clock a. m. Monday, November 18th, 1901, pursuant to the understanding of counsel for complainants and defendants.

The motion was granted.

Resumed inquiry—First day.

The inquiry was resumed on Monday, November 18th, 1901, at 10 o'clock a. m.

The CONSUL: This inquiry is held on a commission granted by the circuit court of the United States for the district of Washington, directed to me and appointing me as commissioner, and under this appointment this inquiry was opened on Friday, 15th inst. It was a mere matter of form opening it at that time as that was the date appointed. There was adjournment until to-day.

Mr. J. B. HOWE: I appear on behalf of the complainants, and Mr. Arthur Julian is associated with me as solicitor for the complainants in this suit.

1035 Mr. H. F. P. DONEGAN: I appear for Marie Carrau, the second of the defendants named in the proceedings.

Mr. E. COLLINS: I appear for Mrs. Mary Sullivan, Montana.

Mr. RIDDLE: I wish to state that I appear for the first-named defendant, Terence O'Brien, as administrator of the estate of John Sullivan, deceased.

Mr. ALFRED BLAKE: I appear for Catherine, Mary and Margaret Reardon, (one of them is now named Mary M'Grath).

Mr. HOWE: At this time the complainants object to the cross-examination of any of the witnesses produced on behalf of the complainants by the counsel for the administrator, and also object to the administrator producing any witnesses on the ground that the administrator has filed a disclaimer in this case and has waived putting the plaintiffs to any proofs of the allegations of their bill.

Mr. RIDDLE: For the purpose of keeping in order, I shall probably respond to that by saying that on behalf of the administrator, as his solicitor, I am coming here within the orders of the court, and pursuant to such orders.

EDWARD CORCORAN, witness on behalf of complainants, being first cautioned and sworn, was then examined, and testified as follows:

1036 Mr. DONEGAN: I move that all witnesses, except the one testifying, be excluded from the room.

Mr. HOWE: We have no objection.

(Mr. HOWE:)

Q. What is your name?

A. Edward Corcoran.

Q. How old are you?

A. Next birthday I will be sixty-five.

Q. Are you a subject of, and have you always been a subject of the King of Great Britain and Ireland?

A. Yes, I was never out of Great Britain.

Q. Where were you born?

A. Kilmacleary. I was christened in the parish of Carrigaline.

Q. What was the name of your father?

A. John Corcoran.

Q. Your mother?

A. Elizabeth McAuliffe—Margaret—Peggy they used to call her.

Q. Is Peggy the same as Margaret?

A. Yes.

Q. Her maiden name was Margaret McAuliffe?

A. Yes, otherwise Peggy.

Q. How long did you live in Carrigaline?

A. Until I was about 16 years of age.

Q. What was your business in Carrigaline?

A. I was an apprentice to a harness-maker.

Q. To whom?

A. Dan Mahony.

Q. How long were you serving your time?

A. Three years. Up to the time I got my indentures.

1037 Q. How old were you when you got your indentures?

A. Turned sixteen.

Q. Where did you then go to?

A. To the Grand Parade in Cork to a man named Casey.
Q. How long did you live there?
A. Until I was twenty years of age.
Q. While living in Cork did you have any acquaintance or did you know in any way a man named Peter Sullivan?
A. Yes, I did in Gillabbey lane.
Q. Did you know his wife?
A. Yes, I did.
Q. What was her name?
A. I think it was Mary Sullivan, I am not quite sure; it was a long time ago—Abina, is that Humphrey Sullivan's wife?
Q. What was the name of Peter Sullivan's wife?
A. I believe it was Mary.
Q. How many children did Peter Sullivan and his wife have?
A. Two boys and one girl.
Q. Are you speaking of the Sullivans who lived in Evergreen street?
A. No. Gillabbey lane.
Q. Did you know the Sullivans in Evergreen street?
A. Yes.
Q. What was their name?
A. I can't remember the girls, but there was John, who was about the same age as myself.
Q. How many girls were there?
A. Two only.
1038 Q. What was the name of the father and mother of these girls?
A. I could not tell. On my oath I have often heard it, but I can't bring it to my recollection.
Q. Did you ever visit at the house of Peter Sullivan?
A. Yes.
Q. While visiting the house did you ever see Hannah Callaghan?
A. I think only once in Crone's lane, the first or second house. They removed from there to Evergreen street.
Q. Do you know who the wife of Peter Sullivan was before she married Peter Sullivan?
A. Is this in Evergreen street or Gillabbey lane? I don't know the one from the other. The man you are alluding to, if it is in Evergreen street, worked in Beamish & Crawford's brewery.
Q. The man who worked in that brewery, what was his name?
A. I could not say. I know it was Sullivan, but I do not know the Christian name.
Q. Did you know the wife's name—her maiden name?
A. No, I did not—oh, yes, McAuliffe.
Q. What relation was she, if any, to your mother?
A. They were two sisters.
Q. How many McAuliffe sisters did you know of?
A. Two aunts and my mother—those three sisters.
Q. How long did you live in Cork?

1039 A. I think until I was 20 years of age.
Q. Where did you go then?
A. To Fermoy.
Q. Where did you go after that?
A. To Michaelstown.
Q. Then?
A. Tipperary.
Q. Then?
A. Limerick.
Q. After that?
A. Nenagh, and then to Dublin.
Q. How long were you living in Dublin?
A. I went there about 42 years ago.
Q. How many times since you went to Dublin have you returned to Cork?
A. I never returned until near 12 months ago.
Q. Are your parents dead?
A. Yes.
Q. Do you know of any brothers or sisters that Peter Sullivan had?
A. My aunt's husband, I cannot tell one from the other. I know Humphrey Sullivan who lived in Gillabbey lane.
Q. The man who was working in Beamish & Crawford's brewery you said was John Sullivan's father?
A. Yes.
Q. How did you know that?
A. From my aunt's telling me. I had dinner on Sunday evening and I remember perfectly well I was introduced to Hannah Callaghan as my first cousin.
Q. Were you introduced—by whom?
A. By my aunt.
Q. That aunt was the mother of John Sullivan?
A. Yes.
1040 Q. What became of John Sullivan?
A. He went to sea with a brother in law of his.
Q. What was the name of his brother in law?
A. I could not tell.
Q. Was it Silva?

Mr. DONEGAN: I object to this. The name is suggested by the counsel. He is asked for a name and it is suggested to him.

(Mr. HOWE:)

Q. You said he went to sea with a brother in law, a sailor?
A. Yes.
Q. You don't remember the name?
A. No.
Q. Do you remember the name of John's two sisters?
A. No. I could not rightly tell you the Christian names but he had two sisters.

Mr. BLAKE:

Q. Do you know the names of your aunts?
A. I answered that before. I could not tell. I think the aunt in Gillabbey lane was Mary.
Q. Who was she married to?
A. Humphrey Sullivan.
Q. How many children had they?
A. Three.
Q. Do you know their names?
A. No. The youngest was the same age as myself, he was Denis.
Q. Were they boys or girls?
A. One girl and two boys.
Q. Do you know the name of the girl?
A. I ought to know it, many a time I was in company with her. I could not tell now.
1041 Q. Do you know whom she married?
A. I think John Riordan, as well as I can recollect. I am not too sure of that.
Q. As well as you recollect it was John Riordan she married?
A. Yes.
Q. Do you know had she any children?
A. No. I never saw them until they introduced themselves to-day to me.
Q. How many were there?
A. I could not tell. All the time I was in Dublin, and it is hard to answer that question. There were two sons.
Q. Do you know what happened to them?
A. The youngest was about the same age as myself—Denis—and the eldest when I was a little boy often carried me on his shoulder.
Q. Is he living or dead?
A. I could not tell.
Q. What was his name?
A. As well as I can remember Denis was the youngest and they called the other Peter, but I am not sure.

Cross-examined by Mr. DONEGAN;

—. Where did Peter Sullivan live in Cork?
A. Is this one of the men married to my aunt?
Q. You referred to Peter Sullivan; you stated he lived in Gillabbey street.
A. Gillabbey lane. I do not know Gillabbey street.
Q. Did you know Peter Sullivan who lived in Gillabbey lane?
1042 Mr. JULIAN: He was unable to say whether the man in Beamish & Crawford's was Peter or not. He remembered a man named Humphrey Sullivan who married Mary McAuliffe, but he would not bind himself to the name of the other Sullivan at all.

(Mr. DONEGAN:)

Q. Did you know Peter Sullivan at all?
A. I don't know which Sullivan you mean.
Q. Did you know any Peter Sullivan at all?
A. I will say no, unless Peter was the name of the man my aunt was married to. I told you before I was not too sure of it.
Q. I asked you did you knew Peter Sullivan, and you said no.

Mr. HOWE: The witness has distinctly stated he did not know Peter Sullivan except it was the man his aunt was married to. You state the witness says he did not know Peter Sullivan. The evidence will not go down in that shape.

(Mr. DONEGAN:)

Q. I will repeat it again.
A. I don't know whether it is Denis Sullivan's brother you are referring to, or to Denis Sullivan's uncle.
Q. When did you come to the Parade in Cork to work?
A. When I was about 16 years of age.
Q. You worked with Casey on the Parade?
A. Yes.
Q. Did you know Peter Sullivan at that time?
A. I don't know which Peter Sullivan you are alluding to;
1043 I don't know whether it is Denis Sullivan's brother.
Q. Answer the question.
A. I think I gave you the answer.

Mr. JULIAN: You must not confuse the witness.
Mr. HOWE: You won't let him answer when he is asked a question.

(Mr. DONEGAN:)

Q. When you were apprenticed to Casey on the Parade did you know Peter Sullivan?
A. I have answered that as well as I could. As long as you put that question I will answer the same. I wanted to know was it Denis Sullivan's brother or Denis Sullivan's uncle.
Q. As far as I can see I am not in the witness-chair. I asked him when he was sixteen years of age did he know a Peter Sullivan.

The CONSUL: Suppose you ask him did he know any Peter Sullivan?

Mr. DONEGAN: Let him answer the question.
WITNESS: It is 42 years ago and it is very hard to recollect things occurring when you were from sixteen to twenty years of age.

(Mr. DONEGAN:)

Q. If you don't know, I respect you for saying so.
A. I don't say that. I knew my aunt in Gillalley lane and hr

sons and daughters. I knew John Sullivan's two sisters. I
1044 wanted to know was it John Sullivan's father or Denis Sullivan's brother you were alluding to. I know that, but the Christian names I could not tell.

Q. Did you know Peter Sullivan living in Gillabbey street?

A. I don't know where Gillabbey street is. I know Gillabbey lane?

Q. Did you know Peter Sullivan living in that lane?

A. No, unless it was Humphrey Sullivan's son; that is, his eldest son.

Q. Did you swear that Peter Sullivan married Mary Sullivan?

Mr. HOWE: The record shows that.

(Mr. DONEGAN:)

Q. Do you repeat that you stated in the direct examination that you knew Peter Sullivan living in Gillabbey lane?

A. It is hard to recollect; it is such a number of years.

Q. Answer this question.

Mr. HOWE: I object to the counsel breaking in on this examination in this way. When a witness is giving an answer he has a right to complete it, and I request counsel to allow him to complete it.

Mr. DONEGAN: The practice in this country is if a witness is asked a question which requires an answer yes or no, and if it admits of explanation he is to give this answer first and explain after.

1045 Mr. HOWE: You are in an American court here. The witness cannot answer the questions when you break in on him. We are bound by the practice of the courts of the United States.

The CONSUL: Is that the practice or not?

Mr. HOWE: The practice in the United States is this, that if a question does admit of a distinct answer yes or no, the witness can give that and then give his explanation, but I don't think the question as put here was a question which admitted of an answer yes or no. The trouble was that the witness was completing his answer when counsel broke in on him.

Mr. DONEGAN: I ask the witness will he repeat now to me that Peter Sullivan lived in Gillabbey lane and his wife was Mary Sullivan.

Mr. HOWE: I object as immaterial and irrelevant.

WITNESS: It is very hard to answer, I have been so many years out of Cork, it is very hard to recollect all these things.

(Mr. DONEGAN:)

Q. You are on your oath. You answered that you knew Peter Sullivan living in Gillabbey lane, and you stated that he was married to Mary Sullivan. Do you repeat that. Is it true?

A. I don't know, but it may be his son, it may be my first cousin, or it may be my uncle if married; it is hard to tell after all the number of years.

Mr. Howe: I move to strike that out as immaterial, irrelevant and impertinent.

1046 Mr. Donegan: I object to the last statement. It is not my intention to be impertinent.

Mr. Howe: Well, I withdraw the motion if there is no such intention.

(Mr. Donegan:)

Q. You spoke of Humphrey Sullivan. Where did he live?
A. In Gillabbey lane.
Q. When did you know those people?
A. Since I was about five or six years of age.
Q. Do you know whether Peter Sullivan had any children or not?
A. I could not tell whether it was my aunt's son or her husband. Is this the uncle by marriage you are alluding to. There is no use in asking me, I could not tell.
Q. Did you know John Sullivan, the deceased?
A. Yes.
Q. Know him personally?
A. Yes.
Q. Did you know his father's name?
A. No. I don't know. I only know he was working in Beamish & Crawford's brewery.
Q. What was his mother's name?
A. That is another thing I could not tell exactly.
Q. Had he any sisters?
A. Two.
Q. How old were they, or how old was John Sullivan?
A. John Sullivan was about my own age, and his sisters were older; John was younger than the sisters. How many years I could not tell.

1047 Q. When did John Sullivan go away?
A. I left Cork about the year '58 or '57, so I could not tell.
Q. Had John Sullivan gone then?
A. I could not exactly tell.
Q. Was he in Cork then?
A. I don't know. I did not see him there in Cork.
Q. Did you know his sisters?
A. They slighted me because I came from Carrigaline, from the country. I had not an accent the same as they had, and they slighted me more or less because I was not up to date, as they were. That was one reason I left Cork as I did.
Q. Did you know them any way well. Did you see them often?
A. I saw them often enough.

Q. What do you mean by that?
A. When serving my time in Cork I saw them often.
Q. Where were you living yourself. In Cork? Were you living with your master?
A. No. I lived in Gillabbey lane with my aunt.
Q. With the Sullivans?
A. Yes.
Q. You knew the sisters of John Sullivan?
A. You are going from one to another.

Mr. JULIAN: He never lived with Peter Sullivan in Evergreen street.

(Mr. DONEGAN:)

Q. Did you know John Sullivan and his two sisters?
A. Yes.
Q. Did you know them well by appearance?
A. Yes.
1048 Q. Were they married or single?
A. One I believe got married to a sailor.
Q. Do you know his name?
A. No.
Q. Do you remember when it was?
A. No.
Q. Was it before you left Cork?
A. I could not exactly tell.
Q. You don't know whether it was before you left Cork or not?
A. No.
Q. Had you any communication with these people after you left Cork?
A. Never.
Q. How did you get to know that she was married?
A. I heard it from a brother of mine.
Q. It was after you left Cork you heard of the marriage?
A. Yes. I heard it from a brother of mine.
Q. Who told you about the deceased going to America. Was it your brother?
A. I heard it before that. I heard he went to sea.
Q. To sea. Is it John Sullivan?
A. Yes. When I was leaving Cork I had him down as dead. His father and sisters had him down as dead. I got married in 1860 in Dublin.
Q. How old was John Sullivan when he went to sea?
A. About 17 or 18. I could not exactly tell.
Q. Did he go to sea while you were still living in Cork?
A. I heard he went to sea while I was living in Cork.
Q. You and his parents gave him up as dead?
A. His parents and two sisters had him down as dead, and
1049 as I was leaving Cork I had him down as dead the same as his parents and sisters.

Q. Did you ever hear of Hannah Gallaghan?
A. Yes, I did.
Q. When first did you hear of her?
A. When I was about seventeen years of age.
Q. Was that when you were living in Cork?
A. Yes. I was introduced to her as a first cousin of hers in John Sullivan's house.
Q. When was that?
A. A good while ago, when I was 17 or 18, making a guess.
Q. Was that the only time you ever met her?
A. Yes, the only time.
Q. Did you hear of her since?
A. I did about 12 months ago.
Q. Was she living with John Sullivan then?
A. She might be for all I know. I could not tell. I was introduced to her as a first cousin of my own by my aunt.
Q. Who were those people you talk of as Humphrey Sullivan?
A. Do you want me to go back again to Gillabbey lane. Am I to go over it again?
Q. You know Humphrey Sullivan?
A. Yes.
Q. Is Gillabbey St. and Gillibbey lane the same?
A. I do not know it. That is more than I can tell.
Q. Where did Humphrey Sullivan live?
A. In Gillabbey lane.
1050 Q. Is Gillabbey lane and Gillabbey street the same place?
A. I never heard of a street called a lane.
Q. Did you know Humphrey Sullivan who lived in Gillabbey lane?
A. I answered that often enough.
Q. What children had he?
A. Three.
Q. Do you remember their names?
A. I told you Denis was the youngest. I answered that before.

(Mr. COLLINS:)

Q. What relation to you claim to be to John Sullivan?
A. First cousin.
Q. Was Humphrey Sullivan of Gillabbey lane and father of John Sullivan, brothers?
A. No.
Q. Was there any relation?
A. No, only the name.
Q. You are 65 years of age?
A. Next birthday.
Q. You would have been born in 1835?
A. No, 1837.
Q. Did you come to Cork in 1853?
A. I came when I was about 16 or 17 years of age.

Q. How long did you stay in Cork?
A. Four years.
Q. You left Cork in 1857?
A. Yes.
Q. John Sullivan was supposed to be drowned that time?
A. His parents had him down as such when I was living in Cork. They had no account of him.

1051 Mr. RIDDLE: Was there any relationship between Sullivan of Gillabbey lane and Sullivan of Crone's lane?

A. They were cousins, at least their mothers in Gillabbey lane and Evergreen St. were two sisters married to two Sullivans.
Q. In what street or lane did the relatives of John Sullivan the deceased live?
A. Crone's lane. My recollection is not as good as it was years ago. I may not be able to answer a question now, but in quarter of an hour I might.
Q. Did they ever live in Evergreen street?
A. Yes, they did.
Q. Where did they live when you knew them?
A. In Crone's lane.
Q. What was the last time you saw John Sullivan or any of his sisters?
A. About 43 years ago I saw his sisters in Evergreen street.
Q. Do you say one of them was married at that time?
A. I could not exactly say.
Q. Where was John Sullivan the deceased at that time?
A. That is the year about the time I left Cork. He was gone to sea then. I heard he was shipwrecked and drowned.
Q. Did you hear he was drowned at the time you left Cork?
A. I heard it before I left Cork.
Q. Did you ever hear afterwards to the contrary?

1052 A. Not until about a year ago.

Q. Were you ever in correspondence or did you ever see John Sullivan or his sisters after you left Cork?
A. No.
Q. Did you know anything about them at all as to whether they were still alive?
A. No. I could not tell.
Q. Under what circumstances did you learn 12 months ago about the death of John Sullivan?
A. From a gentleman coming to Dublin looking for me.
Q. What gentleman. Do you know who it is?
A. Mr. Wright.
Q. Did you know at any time any other Sullivan in Crone's lane?
A. No.
Q. Sullivan is a very common name in Cork?
A. It is very numerous.
Q. John's people were the only ones you knew in Crone's lane?

A. Yes, that is all.
Q. You say the two sisters were older than John?
A. Yes.
Q. Do you know the names of the sisters?
A. I could not tell. I can't bring it to my recollection.
Q. Did you hear that John Sullivan had been in Ireland in the year 1900 prior to his death?
A. I did.
Q. When did you hear it?
A. I heard it in Dublin.
Q. Did you see him there?
A. No, I did not.
1053 Q. Did you see anybody who saw him?
A. I could not tell that.
Q. Who told you he had been in Cork, Dublin or Ireland?
A. Mr. Wright told me that three years ago he had been in Cork. It is four years ago.
Q. The information was imparted to you by Mr. Wright?
A. Yes.

PATRICK BUCKLEY, witness on behalf of complainants, being first cautioned and sworn, was then examined and testified as follows:

(Mr. HOWE:)

Q. What is your name?
A. Patrick Buckley.
Q. Where do you reside?
A. 70 Dunbar street, Cork.
Q. What is your profession?
A. Clerk or sacristan in the Roman Catholic church at St. Finn Barres, south, in the city of Cork.
Q. Have you in your possession the baptismal register and the marriage register of that church?
A. Yes.
Q. Produce the register for the year 1832. (Register produced.) Is this the original marriage register for 1832 for St. Finn Barr's church?
A. Yes.
Q. How did you get possession of it?
A. I have the custody of the registers.
Q. Was it handed down by your predecessors in office?
1054 A. Yes, by those who have a right to give it, the parish priest.
Q. Has it remained in your possession since?
A. Yes.

(Refer to the entry showing the marriage between Peter Sullivan and Abbey McAuliffe on the 22d Sept., 1832.)

WITNESS (reading): "22nd September, 1832, Peter Sullivan

and Abbey McAuliffe by dispensation. Witnesses, Michael Murphy and Norry McAuliffe. Marriage performed by Rev. Alexander Mahony" who lived at the time.

Mr. Howe: I will now hand in Complainants' Exhibit "A." (To the witness:) I will now ask you have you made this copy from the book you have just identified?

A. Yes, an exact copy.

Q. Did you examine it to see it was a true correct copy?

A. Yes, carefully.

Q. Do you swear it is a true and accurate copy?

A. Yes, certainly.

Mr. Howe: Complainants now offer in evidence Complainants' Exhibit "A," being the marriage certificate referred to. Complainants also offer an exhibit of the same certificate certified by the consul. This will also be Exhibit "A." (To witness:) I now ask you to refer to the baptismal register for the year 1834—17th Jan. 1834. What name do you find there?

1055 Witness: "Eliza Sullivan, daughter of Peter Sullivan and Abbey McAuliffe. Charles McCarthy and Austy Buckley, sponsors."

Q. Is this the original baptismal registry of the church of St. Finn Barr's in the city of Cork?

A. Yes.

Mr. Howe: I now hand you the certificate, Mr. Commissioner, and I will have it marked Exhibit "B." (To Witness:) This is an accurate copy of the original baptismal register you have referred to?

A. (Witness:) Yes.

Q. Did you make it?

A. Yes.

Q. Will you swear it is true and accurate?

A. Yes, certainly.

Mr. Howe: We also put in evidence a copy certified by the consul and will mark it "B." Refer now to the baptismal register for the 3d Jan., 1836. Refer to the entry with regard to Ellen Sullivan.

Witness (reading): "Ellen of Peter Sullivan and Abigail McAuliffe. William Murphy and Mary Sullivan, sponsors. Priest, Rev. J. Clancy."

Q. Is this the same volume as that from which you have testified just now?

A. No; that is an earlier one.

(Mr. Howe:)

Q. This will be Exhibit "C." (To witness:) Did you make this instrument?

A. (Witness:) Yes.

1056 Q. Is it a true and accurate record from the book you have just testified to?
A. Yes.
Q. You swear it is true and correct?
A. Yes.

(Mr. HOWE:)

Q. I also offer Exhibit "C," a similar document, certified by the consul, and I will ask you to mark that with the same letter "C." (To witness:) Turn now to the baptismal register for 27th Jan. 1840.

WITNESS (reading): "John of Peter Sullivan and Abigail McAuliffe Humphrey Sullivan and Bridget Callaghan, sponsors, priest, Rev. Alexander Mahony."

Mr. BLAKE: It is O'Mahony in one copy of the certificate.

The CONSUL: I have had a lot of experience of late in connection with parish registers and I find that the "O" is omitted very frequently in some families. Even an affix in the case of O'Sullivan Bere is cut off and they call themselves Bere.

Mr. HOWE: I now ask you to mark this Exhibit "D." (To witness:) Did you make out this instrument?
WITNESS: Yes.
Q. Did you make it out from the original book?
A. Yes.
Q. Is it a true extract from the original book?
A. Yes, except that there is no "O" on one of the copies that is strictly accurate.

Mr. BLAKE: Strike out the "O" from the other.

1057 By Mr. HOWE: Turn now to the marriage register for June 3d, 1854. Is that book the original marriage register for the year 1854 in the church of St. Finn Barres in the city of Cork?
A. Yes.

Mr. HOWE: Read the entry relating to Ellen Sullivan.
WITNESS (reading): "June 3d, 1854, Emmanuel Savertian De Silva to Ellen Sullivan. Witnesses, Peter Sullivan and John Sullivan. Rev. J. Cummins, priest."

(Mr. HOWE:)

Q. (Producing certificate.) Do you swear that is a true and accurate copy from the marriage register you have just read from?
A. Yes, certainly.
Mr. HOWE: I now offer this as Exhibit "E" and also a copy of the same instrument certified to by the consul. That will also be "E." (To witness:) Will you allow us to take these several volumes to America?
A. No, I could not.

Q. Will you let them go to the court of the United States?
A. Not without authority.
Q. Have you made any search through the marriage registers and baptismal registers for any births or marriages in the Sullivan family?
A. Outside all these?
Q. Relating to the family of Peter Sullivan and Abigail Sullivan?

Mr. DONEGAN: I object.

(Mr. HOWE:)

Q. Have you found any?
A. None except those I produce.
1058 Q. That is the result of the search?
A. Yes.
Q. You have not found any others?
A. Not a single one.

(Mr. DONEGAN:)

Q. What you were asked to do you did?
A. (WITNESS:) I produced what I found.

(Mr. HOWE:)

Q. Have you searched for others?
A. (WITNESS:) Yes.
Q. Have you been able to find any others?
A. No.

Mr. BLAKE: On the 23d August, 1828, you have a marriage?
WITNESS (reading): "Humphrey Sullivan & Mary McAuliffe. Rev. William Scannell, priest."

Q. Who was the witness?
A. Thomas Hanckard and John Gosling.

Mr. BLAKE: I will hand this in as Exhibit No. "1" on behalf of Catherine, Mary, and Margaret Riordan. Refer now to 15th September, 1831.
WITNESS (reading): "15th September, 1831, baptism, Margaret of Humphrey Sullivan and Mary McAuliffe. Wm. Curtin and Mary Healy, sponsors, priest Rev. Alexander Mahoney."
Alexander Mahoney."
Mr. BLAKE: That will be No. "2." Turn to the 24th Feb-
1059 ruary, 1859, marriage, that will be No. "3."
WITNESS (reading): "24th February, 1859, John Riordan to Margaret Sullivan. Witnesses, Timothy Reardon and Margaret Cullinane. Rev. J. Brennan, priest."
Mr. BLAKE: That will be No. "4." The next is a baptism also. 18th January, 1860.
WITNESS: I have not that book. You did not give me notice.

Q. Is not this certificate I hold made out by you?
A. Yes.
Q. Is it not a correct abstract from the register?
A. Yes, I guarantee it.

Mr. BLAKE (reading): "18th January, 1860, baptism by Rev. J. O'Connell, Catherine Reardon, parents, John Reardon and Margaret Sullivan, sponsors Timothy Reardon and Bessie Sullivan." That will be marked No. "4."

Q. Is that a correct extract taken by you?
A. Yes. The next is a certificate of baptism of 15th December 1861, by Rev. J. O'Mahony, of Mary Reardon, parents John Reardon and Mary Reardon."
Q. Is that a true extract taken by you from the original documents?
A. Yes. That will be marked No. "5."

Next I hand in a certificate of baptisms on the 11th March, 1864, by Rev. J. Mahoney, Margaret Reardon, parents John Reardan and Margaret Sullivan, sponsors, Michael Corcoran, Ellen Sullivan.

1060 Mr. BLAKE: This document produced is a certificate that I do not intend to produce in evidence and possibly I will not put it in at all, but as the clerk is here I merely want to have it acknowledged, that it is a correct extract to be marked by you so that if I should think proper I should be able to use it afterwards (To witness:) Is that a true extract?
A. Yes.

Mr. BLAKE: It is a certificate of baptism.

Q. (To witness:) Is that a true extract from the books?
WITNESS: Yes.

(Mr. DONEGAN:)

Q. With regard to De Silva's marriage you were not in the south parish then?
A. I was not born then.

(Mr. COLLINS:)

Q. You made a further search for Mr. Wright, did you?
A. Yes. I was asked to and I did.
Q. Have you any particulars of the names you were asked for?

Mr. HOWE: I object as immaterial.

(Mr. COLLINS:)

Q. I did not quite follow your statement. You said you made a search?
A. I was asked to search for the baptism of Abina McAuliffe and also a brother of this man by name of Patrick Sullivan and I could not find them.

Q. You searched for Patrick Sullivan and could not find that?
A. No.

Mr. RIDDLE: No cross-examination for the administrator.

1061 MARY MAHONY (examined).

(Mr. JULIAN:)

Q. Where were you born, Mrs. Mahony?
A. At a little above the village a place called Fahylea.
Q. Is that near Carrigaline?
A. It is near Mrs. Henry Daunt's place. I left that place before I was eight years old.
Q. And where did you go to?
A. Down into the village of Carrigaline.
Q. When residing at the village of Carrigaline did you know Edward Corcoran whom we have here to-day?
A. Indeed, I did, sir.
Q. Do you recollect what his father's name was?
A. John Corcoran.
Q. Do you know what his mother's name was?
A. Margaret McAuliffe.
Q. Do you recollect whether they called her any shorter name?
A. Peggy.
Q. Do you recollect what her surname was before she was married?
A. Peggy McAuliffe was her maiden name.
Q. Do you recollect the house in which John Corcoran and his son Edward lived in?
A. I do very well.
Q. Do you recollect the landlord of the house?
A. A Mrs. Power.
Q. Do you recollect whether Corcoran was bound to any trade in Carrigaline?
A. Yes; he was bound to harness-making.
1062 Q. Do you recollect the name of the man to whom he was bound?
A. Dan Mahony.
Q. Did he remain in Carrigaline until he had served his time?
A. Well, I don't know whether he finished his time in Carrigaline or not.
Q. Do you recollect his coming to Cork?
A. Very well.
Q. When he came to Cork did he occasionally revisit Carrigaline?
A. He did, sir.
Q. Do you recollect how long it was that you last saw him until recently?
A. A long time—I forget.

Q. You cannot estimate the time?
A. Indeed, I cannot.
Q. Do you recollect him revisiting Carr-galine this present year or last year?
A. Yes; it was before Christmas last year.
Q. Had you any difficulty then in recognizing him as Ned Corcoran you knew as a child as a playfellow?
A. No. He was very old but his features were the same.
Q. And the Ned Corcoran you saw here to-day you have no doubt is the same Ned Corcoran you knew in Carrigaline as a boy, as an apprentice?
A. Indeed, he is, sir.
Q. And the son of John Corcoran and Peggy Corcoran, otherwise McAuliffe?
A. The very boy.

Mr. Blake said he would not cross-examine the witness.

1063 Cross-examined by Mr. DONEGAN:

Q. (To witness:) How old are you?
A. I think I am up to about 58 as near as I can think.
Q. Do you recollect this Margaret or Peggy McAuliffe?
A. I do recollect her and saw her dead.
Q. But they called her Peggy McAuliffe?
A. They called her that.
Q. But was she not married to John Corcoran?
A. Oh, she was.
Q. Was that long before your time?
A. It was.
Q. But in Carrigaline do they usually address married women by their maiden names?
A. They call myself by my maiden name at the present moment.
Q. You say this man Edward Corcoran came down to Carrigaline this year or last year, is that so?
A. Yes.
Q. You knew him as a boy?
A. Yes.
Q. Do I understand you to say that you were only eight when you knew him in Carrigaline?
A. Yes.
Q. And you had no hesitation in recognizing him?
A. Oh, I saw him later than that. I saw him when he revisited Carrigaline as a big boy.
Q. What was the last time you saw him prior to 1900?
1064 A. I don't know. It is a good many years ago, of course his family are all reared up now.
Q. When he came to Carrigaline last year, did you recognize him instantly?
A. Indeed, I did.

Q. Your attention was not called to him by anybody?
A. No.
Q. Did he come accompanied by anybody?
A. With Mr. Wright.
Q. Had Mr. Wright been with you previously?
A. Yes. I had a meeting with him in Conway's yard in Cork. That is where I told him to go to Dublin to look for Ned Corcoran. It was I sent for him.
Q. You knew that Mr. Wright had gone to bring Corcoran to see you?
A. Yes. He told me he was going to go up.
Q. You saw Mr. Wright coming with this old gentleman, and then you recognized Mr. Corcoran immediately?
A. No, Mr. Wright did not tell me who he was. I know him and I would know him anywhere. His features did not change. He got very old, but he is just the same.

Cross-examined by Mr. COLLINS:

Q. Why did you tell Mr. Wright to send for this man Corcoran to Dublin. What object had you in it?
A. He asked me did I know anything about him and I told him I knew he was in Dublin.
Q. But it was Mr. Wright suggested Corcoran. You did not suggest him yourself?
1065 A. Oh, no. He heard from friends of mine that I did know him and when I saw Mr. Wright in Conway's yard where he was to meet me, and I told him he was in Dublin.
Q. It was not you suggested him?
A. Oh, no.
Q. Was he an only son?
A. No. He had two brothers more. One died in America.
Q. You had no recollection of when Mrs. Corcoran died?
A. It is a long time ago. I was a little girl and I saw the woman dead.
Q. And still you have a recollection that she was called Peggy McAuliffe?
A. Oh, yes; I remember Peggy. That's all.
Q. You are 58 years of age?
A. I am if not more.
Q. Are you not more?
A. I don't know, but I am in or about that age.

Cross-examined by Mr. RIDDLE:

Q. How long was it before Mr. Wright brought him to see you that you saw Corcoran?
A. It was a long time.
Q Twenty years?

A. Indeed, it was more.
Q. Thirty years?
A. It was, I am sure, and more. I saw his sister later than that.
Q. Forty years?
A. Well, I think it must be near 40.

1066 MICHAEL POWER, witness for the complainants, being first cautioned and sworn, was then examined and testified as follows:

(Mr. JULIAN:)

Q. Where have you lived all your life?
A. In Carrigaline. I was born and reared there.
Q. Do you recollect having a playfellow there named Edward Corcoran?
A. Well, I must. He lived in the house with my father.
Q. Do you recollect what his father's name was?
A. John Corcoran, sir.
Q. Do you recollect the name his mother was called by?
A. Well, she was called Peggy.
Q. You did not know anything further than that?
A. Not further; only that her name was Peggy.
Q. You say John Corcoran was tenant of your father's house in Carrigaline?
A. He was sir, and a d—d bad tenant he was.
Q. When you and Ned Corcoran were boys used you play together?
A. Yes; we often played goal together.
Q. Do you recollect his being apprenticed to any trade?
A. He was apprenticed to Daniel Mahony, a harnessmaker.
Q. Do you recollect his leaving Carrigaline?
A. Yes, I do. He ran away because he did not finish his time with Mahony.
Q. Do you recollect where he went to?
1067 A. He came to Cork, but whatever time he stayed there I don't know. But I often heard he had gone to Dublin.
Q. Was he older or younger than you are?
A. He is older by four or five years. I am a man of about 60 years; he would be 65 or so.
Q. You would have been together for a period of 10 or 11 years?
A. Well, I would not say so much as that. I remember we played goal together with his brother Johnny.
Q. When he went to Cork did you lose sight of him?
A. I did, but I saw him in Carrigaline once or twice after that.
Q. After leaving Cork he revisited Carrigaline?
A. Yes.
Q. Do you recollect him afterwards, within recent times with Mr. Wright?

A. I do sir, I recognized him as being Edward Corcoran.

Q. Had you any difficulty in recognizing him?

A. Not a b—dy bit, sir.

Q. When you saw him did you address him, or did he address you?

A. I addressed him. I said, "How are you, my poor Ned?" I saw him on a car with three or four gentlemen on the road from Carrigaline to Cork.

Q. Did you and he then discuss matters that occurred in your boyhood?

1068 A. Yes, I did; he was a small bit aged.

Q. Did you ask him if he knew anybody in Carrigaline?

A. I did; he said he knew a man named Reynolds who used to work in Passage. I asked him if he knew a man named Power. He said he knew the Powers and when I brought him to his memory he knew him at once.

Q. Have you any doubt that the Ned Corcoran we produced here to-day is the same Ned Corcoran you knew as a playfellow?

A. I am as sure of it as I am that you are Mr. Julian, and nothing could be surer than that. I knew his two brothers and two sisters perfectly well. There was John Corcoran, Denis Corcoran, and Maria Corcoran—Margaret.

(Mr. BLAKE:)

Q. What has become of them?

A. Well, Maria went to America. There was an indecent assault committed on Margaret; she died, and the man who committed the assault, a man named Meagher, died in the lunatic asylum. John went to sea: Denis worked in McMullen's mills in Cork; I knew him. Where did John go to? John went to sea.

Q. Where to?

A. Some port of England. He was in Carrigaline fourteen years ago with me.

(Mr. DONEGAN:)

Q. Do you recollect what Corcoran's mother's name was?

A. All I know is that her name was Peggy.

1069 Q. And how old are you?

A. Sixty years of age and I told Mr. Wright that Ned Corcoran's age would be about sixty-four.

Q. Do you know the last witness that was examined here very well, Mrs. Mahony?

A. Oh, very well.

Q. Are you older than her?

A. I do not think I am, sir.

Q. Do you say you don't recollect the second name of the woman—the surname of this mother of Corcoran?

A. I knew them as Peggy and old Jacky Corcoran.

Q. Would not she be called Peggy Corcoran?

A. Oh, certainly, but Peggy we generally called the woman. I was only a little boy at the time.

Q. Would not you consider you would be offending the woman if you called her Peggy McAuliffe?

Mr. JULIAN: We must confine ourselves to Peggy.

(Mr. DONEGAN:)

Q. (To witness:) You say that when Mr. Corcoran came down here from Dublin you recognized him at once?

A. I did.

Q. When had you last seen him?

A. Not for forty years.

Q. Did he change much?

A. He did. He got very gray.

Q. When you recognized him where was he?

A. He was coming out from Cork on a car with two or three more gentlemen.

1070 Q. Who was on the car with him?

A. Well, the jarvey and three or four other gentlemen whom I did not know. I could not tell their names.

Q. Did you know he was coming out to interview you?

A. No, I was not told he was coming to see me. I was going to Cork to see him. I did not know he was coming to Carrigaline.

Q. Is it your evidence that you saw four men driving on an outside car with a jarvey?

A. Well, three or four and the jarvey. I knew the jarvey.

Q. And that without knowing that Corcoran was coming out to see you, you recognized him?

A. I did.

Q. You saw Edward Corcoran last year?

A. Certainly, I would know him anywhere.

Q. Do you swear that?

A. I do.

Q. Do many cars pass on the road to Carrigaline during the day?

A. Oh, yes.

Q. And you swear you recognized this man after an absence of forty years?

A. Without a doubt.

Q. Did you ever hear from him in the meantime?

A. No. I heard he was in Dublin—I never saw him since. I recognized him at once.

Q. And you swear that you had no reason to believe that he was going out to see you that day?

A. By the virtue of my oath I swear it. I am sure of it.

1071 Q. Do you swear that notwithstanding that thousands of cars pass there during the day?

A. Oh, not thousands.

Q. Would you say hundreds?

A. No, not hundreds; some say not twenty. But there would be more on race day.

Q. What day was this? Was it a Sunday?

A. No, only a week day.

Cross-examined by Mr. RIDDLE:

Q. Did you know any of the men who were with him on the car?

A. No, only Mr. Wright. It was a Stephen's day when he was brought into the house. Mr. Wright asked me did I know this Corcoran. I said I did perfectly well, and I said he had two brothers and two sisters—John Corcoran, Denis Corcoran, Margaret Corcoran, and Marie.

Q. Was Mr. Wright on the car with Mr. Corcoran?

A. He was, and two more men, I think. I was driving my own horse and cart into Cork that day.

Q. Did you know the other men who were with Mr. Wright and Mr. Corcoran?

A. No, I knew the jarvey who was driving.

Q. You said Mr. Wright was on the car?

A. I did because he introduced himself to me. I did not know him at that time. "Did you get my letter?" he said. "No," said I. "How do you spell your name?" said he, and I told him.

1072 Q. Mr. Wright told you that he wanted you to go to Cork for to meet this man?

A. Yes; to identify him. I told him I would identify him among a thousand.

Mr. COLLINS:

Q. Were you going to Cork that day to meet him?

A. No, I go into Cork every day in the week. I never thought I would meet him that day.

MICHAEL COONEY, being first duly cautioned and sworn, was then examined and testified as follows:

Mr. JULIAN:

Q. You reside at Carrigaline?

A. Yes, sir.

Q. Have you resided in Carrigaline all your life?

A. I was born in Middleton, but I came on my mother's breast into Carrigaline.

Q. So you have resided in Carrigaline all your life?

A. Yes, sir.

Q. What are you?

A. I was once a nailer, but that is a thing of the past now. I am a shopkeeper now.

Q. Do you recollect as a boy who you used to play with?

A. Yes, sir.

Q. You saw Ned Corcoran here to-day?
A. I did.
Q. Do you recollect him as a boy in Carrigaline when you were a boy?
A. Yes.
Q. Do you think he is older than you are or are you older than he is?
1073 A. I think he is older than me by a few years.
Q. I suppose you are not very positive as to your own age?
A. Well, common sense tells me from the day I began earning what age I am. I am about sixty-two. From the time I went into the nail making I calculate.
Q. Before you went to nail making had Corcoran adopted any trade?
A. About the same time as I went to business he went to harness making.
Q. You were apprenticed about the same time?
A. About the same time.
Q. Previous to your apprenticeship did you know him?
A. I did.
Q. Were you playfellows?
A. Yes, all our lives from boyhood until that time.
Q. Do you recollect what his father's name was?
A. I do. He was always considered Jacky Corcoran.
Q. Do you recollect what his mother's name was?
A. I do, sir. Peggy.
Q. They all called her Peggy?
A. Jacky and Peggy were the common phrase.
Q. Do you recollect the owners of the house in which Jacky Corcoran lived?
A. Yes. One named Power.
Q. He was a tenant of Mr. Power?
A. Yes, sir.
Q. Do you recollect to whom Ned Corcoran was bound as apprentice?
A. Yes, to Danny Mahony, the harness-maker.
1074 Q. Do you recollect Ned Corcoran leaving Carrigaline?
A. I do, well.
Q. Where did he go?
A. To Cork. I heard he went to Cork.
Q. You know he went to Cork?
A. Yes, I understood he went to Cork.
Q. Do you recollect ever seeing him revisit Carrigaline after he left Carrigaline?
A. I never saw him until this gentleman (pointing to Mr. Wright) brought him.
Q. Do you recollect this man Corcoran walking into your house sometime in the end of last year or the beginning of this year?

A. I do, indeed.

Q. Had you any difficulty in recognizing Ned Corcoran as your playfellow and as the apprentice in the man you saw walking into your house with Mr. Wright?

A. The very moment he came in I got a feeling over me and I said, "My poor fellow, Ned," or words to that effect. I never knew he was in the world. This gentleman (Mr. Wright) was talking to him a few minutes before that.

Q. Have you any doubt whatsoever the Ned Corcoran we had here to-day is the same Ned Corcoran you used to play with as a boy?

A. No shadow of doubt in this world. He is the real boy I knew as Ned Corcoran.

Mr. Blake did not examine the witness.

1075 Cross-examined by Mr. DONEGAN:

Q. (To witness:) How long is it since you saw this man before?

A. I suppose, sir, it is about forty years.

Q. Has he changed very much in those forty years?

A. I thought of a saying about Mother Seigel's syrup and I made a remark to him about old age creeping on and changing a man.

Q. Did you recognize him?

A. When he came in I got a sort of a standstill but it did not last like that (with a gesture) while I identified him. Honestly and above board.

Q. The minute he came in you are sure you said, "There you are Ned, my poor fellow"?

A. I told him about how men changed. I could not believe in the change from a boy. I felt as if myself was old and I do not feel old. I felt sorry, you know, that kind of feeling. I do not believe I am so old at all.

Q. Had you seen Mr. Wright any time before that?

A. I saw him a few months before that.

Q. Did Mr. Wright tell you anything about Corcoran coming down to see you?

A. Never a word. He told me that Corcoran——

Q. Did he mention Corcoran's name to you?

A. He asked me did I know a man named Corcoran?

Q. Did he tell you he was coming down?

A. No.

Q. Did he tell you anything about him at all?

A. He asked me did I know him and I told him that
1076 about forty years ago he went to Cork. I told him that I thought he went to Dublin. He never told me that he would bring him out from town.

Q. Did he tell you that he had seen him himself or knew anything about him?

A. Not a word in the world.

Q. When was this conversation you had with Mr. Wright?
A. The first day he ever came to me.
Q. When was that?
A. Well, really I could not tell you because I took no interest in it.
Q. Was it a year ago?
A. Less than a year ago.
Q. Six months?
A. It is and over I think.
Q. You won't give me the month?
A. No, because I could not. I took no interest in the world in it. It was just like the crow flying over my head. I told him I would give him all the information that could help in those things.
Q. Are you older than Mrs. Mary Mahony?
A. I could not tell what age that woman is.
Q. Do you recollect the mother of Corcoran?
A. I do.
Q. What was her name?
A. Peggy Corcoran, I think.
Q. Did you ever hear her called by any other name?
A. No, only I think later on that she was called Peggy McAuliffe, but I did not hear her called Peggy McAuliffe before.

1077 (Mr. COLLINS:)

Q. Did he know you? Did he put his arms around your neck and say, "How are you, Michael"?
A. He did not put his arms around my neck. He did not know me at first, but he did afterwards and the very place I made nails in forty years before, and pointed out the very place where my stepfather worked.
Q. Did he recognize you?
A. Right on the spot like a man.
Q. Did you know when Mrs. Corcoran, the mother, died?
A. It is a long time ago.
Q. Was she dead before he went to Cork?
A. Yes, to the best of my honest belief.

Cross-examined by Mr. RIDDLE:

Q. Had Mr. Wright seen you before you saw Corcoran?
A. Yes.
Q. And Mr. Wright was with Corcoran at the time you saw him?
A. As far as I can judge. I did not see Mr. Wright at the time Corcoran came in—I did not see Mr. Wright at the time I identified Corcoran. He was at the window. I saw him afterwards. He was below at the window when Corcoran was talking to me.

MARY RIORDAN, being first cautioned and sworn, was then examined and testified as follows:

Mr. HOWE: Now, gentlemen, I find Miss Riordan's name
1078 is not down in the original notice, and it might be necessary if any objection is raised to have her recalled at a later date. Therefore, I desire to know if you gentlemen will waive any objection to the examination of this witness to-day instead of on Friday.

Mr. RIDDLE: On behalf of the administrator I certainly have no objection to the examination to-day.

Mr. Donegan and Mr. Blake also stated that they had no objection.

The witness was then examined.

(Mr. JULIAN:)

Q. Miss Riordan what is your age?
A. Forty on the 15th of next month.
Q. Where do you live?
A. Ardfallen.
Q. Do you recollect where you were born?
A. Yes.
Q. Where?
A. On the Bandon road.
Q. Do you recollect what your father's name was?
A. Yes, John Riordan.
Q. And your mother's?
A. Margaret Riordan.
Q. Do you recollect what your grandfather's name was?
A. Yes, Humphrey Sullivan.
Q. Do you recollect what your grandmother's name was?
A. Yes, Mary McAuliffe.
Q. Do you recollect whether your mother had any sisters?
A. I never heard she had.
Q. How do you claim relationship with John Sullivan, the deceased, into whose estate this inquiry is being held?
1079 A. Because my mother's mother and John Sullivan's mother were sisters.
Q. That is what I asked you, so your grandmother must be her sister?
A. Yes.
Q. Do you know who your grandmother's sister was?
A. John Sullivan's mother's name was Abina.
Q. And she must have been a sister of your grandmother?
A. Yes.
Q. And you know that the maiden name of your grandmother and Abina was McAuliffe?
A. Yes.
Q. Do you know what the name of your grandmother's sister's husband was?
A. Yes. Peter Sullivan.
Q. How many children had your grandmother and grandfather?
A. I heard of three, my mother and two brothers.

Q. Do you know what the names of three were?
A. Peter, Denis, and Margaret.
Q. Do you happen to know whether your grandfather and grandmother's three children, Peter, Denis, and Margaret resided in Gillabbey street or Gillabbey lane?
A. In Gillabbey lane.
Q. Do you know where Peter Sullivan and Abina Sullivan resided?
A. Yes. Evergreen.
Q. Do you know how many children Peter Sullivan and Abina Sullivan had?
A. Three.
Q. Do you know what their names were?
A. John Sullivan, Ellen Sullivan and Bessie—Elizabeth?
1080 Q. Do you recollect any one of these marrying?
A. I heard of Ellen marrying, but I did not know. I only heard of her marrying, but I knew Bessie.
Q. Do you recollect where Bessie was in employment?
A. At Mrs. Lyons, in Grenville Quay.
Q. In what capacity was she there?
A. There as a servant.
Q. Do you recollect Bessie going to any place after she left Mrs. Lyons?
A. She went to the lunatic asylum.
Q. What lunatic asylum?
A. Well, first in the Cork lunatic asylum and then she was taken to Bull's asylum.
Q. Do you recollect her dying?
A. Yes.
Q. Do you recollect where she was buried?
A. I do not.
Q. Do you know that the name of the girl who was married was Sylva?
A. Yes.
Q. Do you recollect her dying?
A. Yes, I recollect her dying.
Q. Had she any children?
A. No, sir.
Q. Do you recollect where she was buried?
A. Yes.
Q. Where?
A. The Botanic Gardens.
Q. That is what we know as St. Joseph's cemetery?
A. Yes.
Q. I presume you have been there?
A. Yes.
Q. And have you seen a headstone over her grave?
A. Yes.

1081 Q. And is that on the spot you recollect where she was buried?

A. Yes.

Q. John Sullivan, the son, did you ever see him?

A. No.

Q. Besides the sisters you told us your grandmother had Abina Sullivan, do you know if she had any other sisters?

A. Yes, I heard she had two more sisters but I did not know them.

Q. Well, what were their names?

A. I don't know their names, I heard, but I forget.

Q. Do you know, however, where your grandmother came from and where the other McAuliffes came from? What portion of County Cork?

A. No.

Q. Did you meet a witness that we had produced here to-day—Ned Corcoran?

A. Yes.

Q. Do you know if he is any relation of yours or not?

A. I know he is.

Q. What relation now is he to you?

A. His mother and my grandmother were sisters.

Q. Did you hear what his mother's name was?

A. No, I don't think I did. At least I do not remember.

Q. The family repute is that his mother and your grandmother were sisters?

A. Yes, I know his sister Marie Corcoran.

Q. And was Maria Corcoran always regarded as a sort of second cousin of yours?

A. Yes, they used to stop at our house.

1082 Q. Do you recollect where she came from?

A. I think it was Carrigaline.

Q. Do you know Ned Corcoran at all?

A. No. I knew his brother Denis.

Q. Do you know where Denis is now?

A. They say he is dead.

Q. Died unmarried, did he?

A. I believe so.

Q. Did you ever hear of Peggy McAuliffe?

A. Oh, yes, that was the name, I forgot it, that was Ned Corcoran's mother.

Q. You recollect now that was the name of Ned Corcoran's mother?

A. It was.

Q. And you knew her daughter that came from Carrigaline?

A. Yes.

Q. You knew, you say, Bessie Sullivan who was a sister of the late John Sullivan?

A. Yes.

Q. Did you know anyone else living with the family besides Bessie and John and Ellen? Did you know any relative of theirs living with them?

A. Yes, Johanna Callaghan.

Q. Did you know in what capacity Johanna Callaghan lived in the home of Bessie Sullivan's people?

A. She lived there as the niece of Peter and Abina.

Q. They practically had adopted her?

A. Yes.

Q. Do you know whether Johanna Callaghan is living still?

A. Yes, I know she is.

Q. And where is it she is living now?

A. Evergreen street, I think.

1083 Q. Do you know that she is one of the claimants to this estate?

A. Yes, I know she is.

Q. And have you always known her to be a first cousin of the late John Sullivan?

A. Yes.

Q. Regarded as first cousin in the family of the late John Sullivan?

A. Yes.

Q. Can you tell us the name of Johanna's mother?

A. Like the other, I heard it but I forget it.

Q. At all events, the name of Johanna Callaghan's mother—you heard it and forget it now—you heard it as a sister of your grandmother?

A. Yes.

Q. Now do you recollect where your second cousin John went to?

A. I heard he went to America.

Q. Did you hear what portion of America?

A. Washington.

Q. Did you hear any town in Washington?

A. No.

Q. You don't recollect any town?

A. No.

Q. Did you hear of his return to Ireland at any time?

A. Yes, he was over a short time ago, I think.

Q. You heard he was in Cork a short time ago. When you say a short time ago would it be two or three years ago?

A. About two years ago.

Q. Did you hear of any member of your family called Bridget McAuliffe?

A. Yes.

Q. Who was Bridget McAuliffe?

A. That was Johanna's mother.

1084 Q. And you heard that she was a sister of your grandmother?

A. Yes.

Q. Do you recollect your grandmother and your grandfather?
A. I recollect my grandfather but not my grandmother.
Q. And your grandfather would have been Humphrey Sullivan?
A. Yes.
Q. What was your mother's maiden name?
A. Margaret Sullivan.
Q. She had two brothers?
A. Yes.
Q. And only two brothers?
A. Yes.
Q. And no sisters?
A. I never heard she had a sister.
Q. Do you know what happened the two brothers?
A. One was drowned and the other was never heard of.
Q. But the eldest was Peter?
A. Yes.
Q. The Johanna Callaghan who is a claimant here is the Johanna Callaghan you knew to be living with Peter Sullivan's family?
A. Yes.
Q. Do you know where Peter Sullivan was employed?
A. Yes, in Beamish & Crawford's brewery.
Q. Do you know whether after he left the brewery he was a pensioner of the brewery?
A. Yes.
Q. They continued to pay the pension up till his death?
A. Yes, they did.

Q. You have told us a lot that is not within your knowl-
1085 edge. From whom did you get the information that is not within your knowledge?

A. I don't think I told you anything that is not within my own knowledge.
Q. It is not within your own knowledge that John Sullivan went to America?
A. No. Mother told me.
Q. Anything you have told that you did not know within your own knowledge. I understand you have told us owing to what your mother reported to you?
A. Yes.
Q. A matter of family repute?
A. Yes.
Q. It has been discussed in the family, and you recollect these discussions and the result of these discussions is what you tell us now?
A. Yes.
Q. About Peter Sullivan and Abina, about your family generally, and about John going to America and settling in a State called Washington?
A. Yes.
Q. And your mother told you what you have told us?

A. Yes, only that I knew Peter and Abina.
Q. But anything in addition to your own knowledge you have told us was a matter of discussion by your mother?
A. Yes.
Q. How long ago is it since your mother died?
A. I think she is dead about thirty years.

(Mr. BLAKE:)

Q. Therefore anything you say your mother told you and anything you told us is a matter of thirty years ago?
A. She is dead twenty-nine or thirty years.
1086 Q. When you speak of recollecting Abina McAuliffe, by what name used you always address her?
A. Aunt Abby.
Q. You looked upon her as an aunt of yours?
A. Yes.
Q. Humphrey Sullivan, he was your grandfather. Do you know what relation, if any, he was to Peter Sullivan?
A. Peter Sullivan was his nephew.
Q. And they were both married to sisters?
A. Yes.
Q. And at that time was it recognized as a peculiar thing that uncle and nephew should be married to two sisters?
A. Yes.
Q. I believe Margaret, your mother, was first cousin to Hanora Callaghan and Edward Corcoran?
A. Yes.
Q. You claim that your mother is in the same degree of relationship to deceased John Sullivan as Hanora Callaghan and Edward Corcoran?
A. Yes.
Q. Am I right in saying that Kate, Mary, Margaret, being her children, are claiming by representation in the right of your mother?
A. Yes.
Q. And the three of you then claim as the representative?
A. Yes.

(Mr. DONEGAN:)

Q. You say you knew this family very well. You knew the girls Bessie and Ellen?
A. Yes.
Q. Did you know John?
A. No.
Q. You never knew his appearance?
A. No.
1087 *A. Yes, I knew Bessie intimately.*
A. Yes, I knew Bessie intimately.
Q. And did you know she was with this Mrs. Lyons?
A. Yes, I was in Mrs. Lyons' house with her.

Q. That was when she was on Grenville quay?
A. Yes.
Q. Now you say she subsequently went into the lunatic asylum?
A. Yes.
Q. Did you hear that she died?
A. Yes.
Q. When?
A. I could not tell you really.
Q. In your opinion what time? How many years ago?
A. About twenty-eight or thirty years ago.
Q. You say that this woman died twenty-eight of thirty years ago?
A. Yes, as far as I can remember.
Q. And you knew her intimately?
A. Yes.
Q. When did Ellen Sylva die?
A. I could not say the date.
Q. Could you give us any idea about it?
A. I could not, I know she died but I cannot say the date.
Q. Can you give me some idea of the time?
A. I cannot.
Q. Did you say in your direct evidence that she had a tombstone in the Botanic Gardens.
A. Yes.
Q. Did you identify the spot as the place this woman was buried?
A. Yes.
Q. How?
A. When my mother died we used always go and look at it. We looked on this as Ellen Silva's grave.
1088 Q. Did you see her buried there?
A. No.
Q. Were you at the funeral?
A. No.
Q. And how do you identify it?
A. Well, my father and all our people told us so.
Q. Now you were asked a question by Mr. Julian as to the names of these two aunts of yours. You had considerable difficulty in thinking of their names had you not?
A. I had, in two of them.
Q. You don't recollect their names until they were suggested by counsel?
A. I did not recollect their names at first.
Q. But later on when the names were suggested by counsel you did recollect them?
A. Yes, because I often heard of them, but I forgot them.
Q. Were you talking over this case lately to many people?
A. No.
Q. When did you first hear of John Sullivan's death?

A. About this time twelve months.
Q. Who told you?
A. Johanna Callaghan I believe.
Q. Anybody else?
A. No, except Mr. Blake.
Q. And Bessie Sullivan died you say about twenty-eight or thirty years ago. Do you recollect her death or anything about it? You remember it occurring?
A. Yes.
Q. And you also recollect the death of Ellen Sylva?
A. Yes.
1089 Q. And you cannot say the time. Did they die near each other in point of time and how many years do you think?
A. I could not say.
Q. You could not give an idea of the time though you knew them intimately?
A. No.
Q. Was it ten years?
A. Oh, I don't think so.
Q. Did you ever hear that there was money in the Cork savings bank left by these people?
A. Yes.
Q. When did you first hear that?
A. I heard it immediately after she died?
Q. Now, I want to ask you this question. Did you ever hear amongst the other common remarks in the family anything about John Sullivan, the deceased man?
A. Yes.
Q. Did you hear that he was shipwrecked and lost?
A. Yes.
Q. And lost?
A. No, not lost, I don't think I did.
Q. You never heard it remarked in the family that he was lost?
A. No. I don't think he was lost they said.
Q. As far as you know it was never suggested in the family that he was lost?
A. Not as far as I know. It might have been but I never heard it.
Q. You say that immediately after the death of these people you became aware that there was money in the savings bank in their names?
A. Yes.
Q. How did you become aware of it?
1090 A. Because she was my sister's godmother and it was said that my sister should get the money.

(Mr. BLAKE:)

Q. What sister?
A. She was my sister Kate's godmother.

(Mr. DONEGAN:)

Q. And it was said your sister Kate should have got the money?
A. Yes.
Q. Is she alive?
A. Yes.
Q. Your mother was not alive at the time?
A. No. I don't think she was.
Q. Did you know Hannah Callaghan intimately?
A. Yes, she lived in Peter Sullivan's house.
Q. I believe she was a person you would not care to know intimately at that time.

Mr. HOWE: I object, as incompetent, irrelevant, immaterial, and not cross-examination.

Q. Wasn't she a very poor woman?
A. She was.
Q. And would not this money in the savings bank be very useful at the time?
A. It would.
Q. Do you know what relationship she bore to John Sullivan?
A. Yes.
Q. Did you know this three hundred pounds, or whatever sum it was, would be a great addition to her income?
A. I did not think about it at the time.
Q. You thought your sister was entitled to it, you know. Didn't you state that Hannah Callaghan was related to the deceased?
A. Yes.
Q. Did you ever meet Hannah Callaghan?
A. Yes.
1091 Q. Were you in the habit of meeting her?
A. Yes, at Peter Sullivan's house.
Q. Did she, at Peter Sullivan's or anywhere else, say anything about this money?
A. No. It is such a long time I cannot remember.
Q. Was your father dead at the time?
A. No.
Q. Was Peter Sullivan alive at the time Bessie died?
A. No, he was dead.
Q. When you met her at Peter Sullivan's house, when was that last?
A. Thirty years ago.
Q. What relation were those two men that you say one was drowned and you never heard of the other?
A. My mother's brothers.
Q. You don't know what became of them?
A. No; one was drowned.
Q. And the evidence you give as your personal knowledge is got from your mother?
A. Yes.

Q. Now, when you were asked the question as to where Marie Corcoran came from, you hesitated.

Mr. HOWE: I object to that question.

(Mr. DONEGAN:)

Q. Did she state she came from Carrigaline?
A. She did.
Q. That is Ned Corcoran's sister. Did you know her?
A. I did.

Cross-examined by Mr. EUGENE COLLINS:

Q. You know Bessie Sullivan that left some money in the savings bank?
A. Yes.
Q. Did you speak to Hannah Callaghan about that?
1092 A. No.
Q. Did you know she was a relative of the deceased?
A. Yes.
Q. You never thought of looking for the money yourself?
A. No.
Q. You were a near relative; did you see an advertisement in the Cork papers stating that the money was there and looking for relatives of the deceased?
A. No, I did not.
Q. A notice in the Cork papers, put in by the savings bank?
A. No.
Q. You said you met Hannah Callaghan at Peter's house?
A. Yes.
Q. Did you meet Bessie Sullivan there also?
A. Yes.
Q. She lived with her father and mother, did she?
A. Yes.
Q. Did you know her when she was living with the father and mother?
A. No.
Q. Did you know Ellen Sullivan when living with the father and mother?
A. Yes.
Q. Did you call at Mrs. Lyons' to see this woman?
A. Yes.
Q. Did Mrs. Lyons ever see you?
A. Not that I remember.
Q. Did you ever see Mrs. Lyons?
A. No.
Q. You believe that is about twenty-eight or thirty years ago?
A. As far as I can remember it is about that time.
1093 Q. Did you know John Sullivan who was over here last year?

A. Not when he was here.
Q. Did you know at the time that he was here?
A. No.
Q. Who told you?
A. I could not tell you myself; I heard of it from several.
Q. Did you hear it after his death? I suppose you had never seen John Sullivan?
A. No, he had gone off to America and come back after a long time.
Q. Did he ever look you up when he was over here?
A. No.
Q. The first you heard of him was when he was dead?
A. I could not tell you.
Q Do you remember being told his father's name was Peter?
A. Yes, I know that perfectly, and the mother, too. I knew both very well.
Q. You had no idea, you stated, that John Sullivan was dead?
A. No, I could not know anything about him.
Q. Who told you he was dead?
A. Hannah Callaghan told me.

Cross-examined by Mr. RIDDLE:

Q. Did you know that John Sullivan was alive any time for the last fifteen, twenty, or thirty years?
A. No, I did not.
1094 Q. Did you know there was such a man in existence?
A. I knew there was a person of that name. I knew there was a John Sullivan, but I did not know whether he was alive.
Q. Did you hear where he was, where he lived?
A. No.
Q. Do you remember about what time you heard of him?
A. I heard my mother speaking about him.
Q. When?
A. Before she died.
Q. How long ago is that; is it thirty years ago?
A. It was when Bessie died.
Q. For the past thirty years you have never heard anything of John Sullivan?
A. No.
Q. As to whether he was alive or dead?
A. No, I do not know.
Q. When Johannah Callaghan told you that John Sullivan was dead, how did you know that it was John Sullivan, the deceased, in this case?
A. Because I know that Peter Sullivan had a son named John.
Q. Did you ever see him?
A. No, I never saw him.
Q. Do you remember when he left Ireland?
A. No.

Q. In what year were you born?
A. In December, '61.
Q. You say you knew Ellen Silva?
A. Yes.
Q. Did you know her before she was married?
A. I cannot remember.
1095 Q. What was her name?
A. Ellen Sullivan.
Q. She might have been married; what was her married name?
A. Silva.
Q. Did you know her when she was called Silva?
A. Yes.
Q. Then you knew her when she was married?
A. I knew her, but I cannot say whether she was married or not.
Q. You say that she was living at the house of her father, Peter Sullivan?
A. Yes, it was there I saw her.
Q. You cannot remember whether she was married or not?
A. No.
Q. You cannot remember how old she was?
A. No.
Q. You cannot remember how old you were at the time?
A. As far as I can remember, it was twenty-nine or thirty years ago.
Q. Are you married?
A. No.
Q. When did you first learn that Bessie Sullivan left some money after her death?
A. I don't know who told me after her death, but they expected that my sister, being her goddaughter, should have got it.
Q. Did you hear where the money was?
A. Indeed I did, in the savings bank.
Q. Do you remember how you heard that. Who told it to you?
A. I cannot remember now.
1096 Q. Did you ever go to the bank to inquire about the money?
A. No.
Q. Did Johannah Callaghan go and inquire about it?
A. I could not tell you that.
Q. Did you ever go to see whether you were entitled to that?
A. I don't think so.
Q. Did you or your sister ever go to see?
A. I don't think so.
Q. Did you ever have any conversation with your sister Kate about it?
A. No.
Q. Yet you all agreed she was entitled to that money?
A. There was some conversation about it at the time.
Q. You all agreed that she was entitled to the money?
A. Yes.

Q. And she never went to the bank to inquire about it?
A. I expect she was too young at the time and could not.
Q. How old was she?
A. I could not tell you.
Q. Was she older or younger than yourself?
A. Older.
Q. How old is she now?
A. Forty-one or forty-two.
Q. Bessie Sullivan, you say, is dead about thirty years; how long is Ellen Sullivan dead?
A. I could not tell you exactly.
Q. Was there much difference in time between her death and the death of the other?
1097 A. There was some time.
Q. Was there ten years' difference between the dates?
A. I don't think so.
Q. Do you know whether Ellen Silva left any money?
A. I never heard of it.
Q. You did not see John when he was here. Did you hear of his being over here?
A. Yes.
Q. Who told you?
A. I could not tell who told me. I cannot remember.
Q. Who would be likely to tell you?
A. Some outsiders, I suppose, who met him.
Q. Someone who knew him and talked with him?
A. Yes.
Q. How long after he was here did this person tell you: was it while he was here?
A. After.
Q. Do you know is it a fact that John Sullivan made a thorough search all over Cork for relatives of his?
A. I never heard of it.
Q. You did not know then, that he found no relatives in the search he made?
A. I did not hear that he searched.
Q. Did you hear that he was in Crone's lane?
A. No.
Q. Or in Evergreen street?
A. No.
Q. Do you know whether or not, when you knew Ellen at the time she lived with her father, whether she was married or not?
A. I cannot tell you that. I cannot remember.
1098 Q. Yet you say you knew her well?
A. Yes, quite.
Q. Would not you be acquainted with the fact that she was married or single?
A. But it is such a long time ago.
Q. Did you ever see her husband?

A. No, I did not.

Q. Do you know whether she lived with her father after marriage or not?

A. I do not know.

KATE RIORDAN, being first cautioned and sworn, was then examined, and testified as follows:

(Mr. JULIAN:)

Q. Where do you live?

A. 7 Rockgrove terrace, in the city.

Q. Do you know where you were born?

A. Yes; at Bandon road.

Q. Who were your father and mother?

A. John Riordan and Margaret Sullivan.

Q. Are you a sister of the last witness?

A. Yes.

Q. Do you recollect what were the names of your grandfather and grandmother?

A. Humphrey Sullivan and Mary McAuliffe.

Q. Do you know whether your grandmother, Mary McAuliffe, had any sisters?

A. Yes.

Q. Do you know what their names were?

A. I do not recollect what their names were.

Q. Did you hear of them?

A. I did.

Q. From whom?

A. From my mother.

1099 Q. Did you hear from her what the names of your grandmother's sisters were?

A. Yes.

Q. What names did you hear?

A. There was one, Abina McAuliffe, and Margaret or Peggy, and my grandmother was Mary.

Q. Did you hear from your mother whom Abina McAuliffe married?

A. I think it is Callaghan; I don't remember.

Q. You are claiming to be a next of kin of John Sullivan?

A. Yes.

Q. Do you know who John Sullivan's father was?

A. I did, Peter.

Q. Did you know what the Christian name of John Sullivan's mother was?

A. It was Margaret.

Q. Did you know any of the brothers or sisters of John Sullivan?

A. I knew he had a brother, and I knew he had two sisters.

Q. What were their names?

A. Bessie and Ellen.

Q. Did you know them personally?
A. I knew one of them personally.
Q. Which of them did you know personally?
A. Bessie. It is one of the longest things I can remember.
Q. Where was she employed?
A. At Mrs. Lyons on Grenville quay.
Q. Do you know where she died?
A. She died in the asylum I think.
1100 Q. Was it Bull's asylum?
A. I think so.
Q. Did you know the other sister at all?
A. I don't recollect the other sister.
Q. Do you remember meeting Bessie Sullivan?
A. Yes, I remember when a little girl going with my sister to Grenville quay where she was in situation.
Q. Did you ever meet Hannah Callaghan?
A. Yes, I often met her.
Q. Did you know Hannah Callaghan as a relative of yours?
A. Yes.
Q. What relation of yours is she?
A. *I* first cousin of my mother's. My second cousin.
Q. Now did you know from your mother or any member of the family as to what relation Hannah Callaghan is to the deceased John Sullivan?
A. First cousin, the same relation as my mother.
Q. Did you hear from your mother as to who brought up Johanna Callaghan?
A. She was partly brought up with my grandmother's sister, with this John Sullivan's mother.
Q. Did you hear from your mother that your grandmother and John Sullivan's mother were relations?
A. Two sisters.
Q. Did you hear from your mother or any other member of your family as to whether Hannah Callaghan's mother and John Sullivan's mother were relations?
A. Hannah Callaghan's mother and John Sullivan's mother I think were sisters.
1101 Q. Therefore John Sullivan and Hannah Callaghan are in that way first cousins?
A. Yes.
Q. Did you ever meet that old man Ned Corcoran who was produced to-day?
A. Never before to-day, but I heard of him, I heard my mother speak of him.
Q. You heard your mother speak of him as what?
A As a first cousin of hers.
Q. Was that on the father's side or on the female side?
A. On the female side.

Q. Then Ned Corcoran's mother what was she to your grandmother?

A. Sisters.

Q. Do you happen to recollect your mother tell you of the Christian name of Ned Corcoran's mother?

A. Peggy I think they used to call her.

Q. Therefore John Sullivan's mother could not have been called Peggy?

A. No, I think it was Abina or Mary. I don't know what her name was. It is such a long time ago.

Q. Did you ever hear from your mother or from your father or any other member of your family as to what happened to John Sullivan the son of Peter?

A. I do not remember.

Q. When did you first hear of John Sullivan?

A. I always heard that he was away.

Q. When did you first hear anything in reference to him at all or from whom?

A. Ever since I remember, I always heard my mother talk about him.

1102 Q. Who spoke to you about him?

A. My mother.

Q. You recollect your mother speaking to you of John Sullivan?

A. Yes.

Q. Do you recollect her saying he was away?

A. Yes.

Q. Do you recollect where?

A. In America, some part of America.

Q. As long as you recollect you remember her telling you that?

A. Yes, I do.

Q. Did you hear of his return to Cork any time?

A. Yes.

Q. When did you hear of his return to Cork?

A. About a year and a half ago.

Q. From whom did you hear that he had returned to Cork?

A. From my father.

Q. Before he died he told you that John Sullivan had returned to Cork?

A. Yes.

Q. When did your father die?

A. Twelve months next month.

(Mr. BLAKE:)

Q. Do you know the name of the mother of Hannah Callaghan?

A. Is not it Abbey, sir.

Q. What was your mother's name?

A. Margaret is my mother's name.

Q. And what was your grandmother's name?

A. Mary.

Q. Had she any sisters?
A. She had, sir.
Q. Could you give me their names?
1103 A. She had one called Peggy, which is Corcoran's mother, and there was another, I think it was Abbey or Abina. I don't remember the fourth. I don't remember all their names.
Q. Who was Abina married to?
A. Callaghan is not it.
Q. Who was Abbey married to?
A. Callaghan is not it.
Q. Who was John Sullivan's mother. Do you know?
A. I cannot recollect, but I know she is a McAuliffe.
Q. Do you know which of the McAuliffes?
A. I do not remember, but I know she is one of the four of my grandaunts. I do not remember their names.
Q. I believe you are claiming as representing in common with your two other sisters your mother Margaret Riordan?
A. Yes.
Q. Was she the first cousin of Hannah Callaghan and Edward Corcoran?
A. Yes.

(Mr. DONEGAN:)

Q. Do you know what the name of Hannah Callaghan's mother was?
A. I do not remember.
Q. Did you know Hannah Callaghan well?
A. I did know her well.
Q. Do you know what her mother's name was?
A. I don't know.
Q. Did you know Corcoran?
A. Yes.
Q. Did you know what his mother's name was?
A. Yes, Margaret.
Q. Did you know her?
1104 A. I did not know her at all.
Q. How do you happen to know that?
A. Because I heard my mother speak of it.
Q. Did you ever hear her speak of Hannah Callaghan?
A. Yes.
Q. You did not know the name of Hannah Callaghan's mother. But you know the name of Corcoran's mother?
A. Yes.
Q. What was the surname of Hannah Callaghan's mother?
A. McAuliffe.
Q. Who was the Callaghan that was married to Abina?
A. Is not she Hannah Callaghan's mother that you are speaking of?

Q. Was Abina Hannah Callaghan's mother as a matter of fact, do you know?

A. As far as I could hear.

Q. Did you get the information as far as you know also?

A. I could not say about the information.

Q. From whom did you hear it?

A. I heard it from my mother, but I don't know exactly what her name is. I know that Hannah Callaghan is my mother's first cousin.

Q. Who was Abina married to—you said Callaghan?

A. As far as I know.

Q. Did you get the information as far as you know from your mother?

A. Yes.

1105 Q. Do you recollect Bessie? You say you knew her very well?

A. Yes.

Q. Do you remember when Bessie died—in or about the time?

A. I do not remember but I heard.

Q. You knew that yourself of course?

A. Yes I knew that myself.

Q. In or about what time was that and do you remember?

A. I could not exactly say.

Q. In or about do you know?

A. It is not forty years ago, I do not think it is as long as thirty.

Q. If anybody said it was thirty or twenty and eight years ago it would not be strictly true?

A. I could not contradict that.

Q. Then it might have been twenty-eight or thirty years ago?

A. It might be I do not remember.

Q. You knew this Bessie intimately?

A. Yes.

Q. You know when she was at service with Mrs. Lyons of Grenville quay?

A. Yes.

Q. You knew where she died?

A. Yes.

Q. At the asylum?

A. Yes.

Q. Did you know she left a sum of money?

A. I heard she did.

Q. You did not hear the amount did you?

A. Yes.

Q. Were not you related to her?

1106 A. Yes, a second cousin, she was the first cousin of my mother.

Q. Did you know there were any other relations of hers in Cork?

A. Yes, I always knew Hannah Callaghan was a relation of hers.

Q. Was not Hannah Callaghan very poor?
A. Yes.
Q. Did you hear that the money was in the savings bank?
A. I heard the rumor. Everybody knew it.
Q. Did you ever take the trouble to go and inquire about it?
A. I did not.
Q. Although you were related to her?
A. Yes, I was. That man Corcoran might answer those questions better than I could; it is so long off.
Mr. COLLINS: What age are you?
A. 41.
Q. Where did your grandfather Humphrey live?
A. He lived in Gillabbey street sir.
Q. How long or about since has he lived there?
A. I could not tell you.
Mr. RIDDLE: Are you younger or older than your sister?
A. Older.
Q. By how much?
A. Two years.
Q. What is her age?
A. Thirty-seven or thirty-eight.
Q. Did you and she live together with your father and your mother?
A. Yes, we did.
Q. Until what time?
1107 A. Until my mother died.
Q. How long ago is that?
A. It is going on twenty-eight years dead.
Q. Then you ceased to live together did you?
A. We had to go out earning for ourselves.
Q. Have you seen her frequently?
A. Yes.
Q. Have you seen here daily?
A. Frequently but not daily.
Q. You both live in Cork?
A. Yes, in situation.
Q. Did you and your sister discuss John Sullivan's death?
A. Yes, when we heard of it.
Q. When did you hear of it?
A. We heard people in the street—people talking about it.
Q. What were they talking about it?
A. We just knew who it was.
Q. Who was the first person that told you?
A. I could not tell.
Q. Did you hear that John Sullivan went to sea?
A. Yes I heard so.
Q. Did you hear that he was shipwrecked?
A. Yes.
Q. Lost at sea?
A. Yes.

Q. You say you knew Bessie very well. You did not know Ellen?
A. I did not know Ellen.
Q. You knew of this money that she left?
A. Yes I did.
1108 Q. Was there ever any conversation between yourself and your sister or anyone else concerning your right to this money?
A. No, only among ourselves we knew that we had a right.
Q. Did you ever apply for it or ever go to the bank to see after it?
A. We did not, because we were not very sensible at the time.
Q. All this conversation about Johannah Callaghan and John Sullivan occurred before your mother's death. Your mother told you all these things?
A. Oh, yes, years ago.
Q. How old were you when your mother died?
A. I suppose ten or twelve.

(Mr. BLAKE:)

Q. Who was your godmother?
A. Bessie Sullivan sister to John Sullivan.

(Mr. RIDDLE:)

Q. Was there ever anything said about that you were entitled to the money she left because you were her godchild?
A. There was not.
By Mr. JULIAN (on re-examination): Will you give us the names of your grandmother's sisters? You know that there were certain sisters named Abina and Peggy?
A. Oh, yes, and Mary I don't know the other.
Q. You cannot distinctly recollect when they married what their subsequent names were?
A. I cannot.
Q. You are not certain of that?
1109 A. I am not certain. I cannot trace back on my memory.

Rev. JOHN A. DALY, R. C. C., examined.

(Mr. HOWE:)

Q. Where are you residing?
A. In Cork, No. 8 George's quay.
Q. And what church?
A. The Church of St. Finn Barr.
Q. What is your position in the church?
A. Senior curate of that church.
Q. How long have you been there?
A. About eleven years.

Q. Do you know Mr. Buckley?
A. Yes.
Q. What position does he occupy?
A. He is clerk of the church.
Q. And as clerk of the church has he custody of the registers?
A. Yes.
Q. He has the custody of the registers of births, deaths, and marriages?
A. Yes.
Q. I hand in a paper marked Plaintiffs' Exhibit "A" and is that your signature to that instrument?
A. Yes, that is my signature.
Q. Is that a true and correct copy of the register?
A. I must say to be accurate, I do not exactly remember precisely the particular occasion, but it is always my custom when the clerk—this handwriting is the clerk's signature—it is always my custom when the clerk hands me an extract to look at the book and verify it; I cannot say anything in reference to this particular in-
1110 stance, but I see no reason why I should depart from my usual custom in this case I always followed it.
Q. I hand plaintiffs' exhibit marked "B" and ask if that is your signature?
A. Yes that is my signature.
Q. I presume that was signed in the same circumstances?
A. In the same circumstances.
Q. I hand you plaintiffs' exhibit marked "D," and ask is that your signature?
A. Yes.
Q. Is that signed in the same circumstances?
A. Yes, in the same circumstances.

MARGARET MCGRATH, having been first cautioned and sworn, was then examined and testified as follows:

Mr. HOWE: The witness' name is erroneously given, but we have served notice of an application in reference to it. We want to know whether counsel engaged will agree to a waiver of objection.
(Mr. Blake, Mr. Donegan, and Mr. Riddle agreed to a waiver in this matter.)

(Witness examined by Mr. JULIAN:)

Q. You are the wife of John McGrath?
A. Yes.
Q. Of 11 Crowley's lane?
A. Yes.
Q. And you are the sister of the two witnesses we have examined here to-day. Catherine Riordan and Mary Riordan?
A. Yes.

Q. You are one of the daughters of John Riordan and Margaret Riordan?

A. Yes.

1111 Q. What is your mother's maiden name?

A. Margaret Sullivan.

Q. Do you know of who she was the daughter?

A. Humphrey Sullivan and Mary McAuliffe.

Q. Do you know whether she had any brothers?

A. She had two.

Q. Have they been heard of?

A. Never since they went away.

Q. How long ago is that?

A. I could not tell you that?

Q. You never heard of them?

A. I never heard my mother speak of them.

Q. What is your age?

A. Thirty-seven last March.

Q. You never heard of those two during your time?

A. Never, sir.

Q. Have you heard from your mother what your grandmother's name was—do you know what your grandmother's name was?

A. Mary McAuliffe.

Q. Have you heard from your mother or your father whether Mary McAuliffe had any sisters?

A. She had three sir.

Q. Can you tell us their names?

A. There was one Abina, the other Bridget, and the other Peggy.

Q. Can you say as to whether you recollect your mother stating whom Abina married?

A. Peter Sullivan.

Q. Did you know Peter Sullivan?

1112 A. I did well.

Q. Do you know where he was employed?

A. At Beamish & Crawford's brewery.

Q. Do you recollect when he was too old whether he was pensioned there?

A. He was pensioned off at 9 shillings a week.

Q. I suppose he received that pension up to the time of his death?

A. I suppose so.

Q. Did you know any of the children of Abina and Peter Sullivan?

A. I knew Ellen and Bessie, but I do not know John. Ellen was my godmother.

Q. Do you recollect whether Ellen or Bessie was married?

A. I knew Ellen was married, but Bessie was not.

Q. What is the name of Ellen's husband?

A. Emmanuel de Silva.

Q. Do you recollect what occupation he followed?

A. I could not say, but that he was some kind of a sailor.

Q. What was Bessie doing?
A. She was a servant at Mrs. Lyons', Grenville quay.
Q. Do you recollect where Bessie died?
A. In Bull's asylum.
Q. And also when Mrs. Silva died?
A. Yes, over in Evergreen street.
Q. Did you ever hear them talking of a brothers of theirs?
A. No, I was too young at the time.
1113 Q. Did your mother ever talk about a brother?
A. She always told us they had a brother.
Q. Did you ever hear the brother's name?
A. Yes, John.
Q. Did you ever hear of what happened to him?
A. I was too young; I did not.
Q. Did you ever hear whether he stayed at home or left the country?
A. He left the country.
Q. Did you hear as to where he went to?
A. I do not know, sir.
Q. When you knew Bessie and Ellen did you know a person named Johanna Callaghan?
A. I did.
Q. Did you know her at that time?
A. I saw her about in their house.
Q. Did she live with them?
A. Yes, at the time I say.
Q. She lived with them as a member of the family?
A. Yes.
Q. Did you ever hear what relation Johanna Callaghan was to the Sullivans?
A. I always heard my mother saying she was their first cousin and her first cousin.
Q. Did you hear as to the relationship Johanna's mother bore to your grandmother and to Abina Sullivan?
A. Abina Sullivan was Hannah Callaghan's aunt and my grandmother was her aunt.
Q. Who was the fourth sister married to?
A. Corcoran.
1114 Q. Do you know what her Christian name was?
A. Peggy McAuliffe.
Q. You heard that from your mother?
A. Yes, and from my aunt Abby too, that is John Sullivan's mother.
Q. Did you ever meet Ned Corcoran before you met him here?
A. I never saw him in any sort of way.
Q. Did you ever hear from your mother as to whether there was a Ned Corcoran?
A. No, I heard about Mary and Denis.
Q. Used Mary come to Cork?

A. She was living with my mother for a night before she went to America.

Q. Do you recollect that?

A. I heard my mother say so.

Cross-examined by Mr. BLAKE:

Q. What were Humphrey Sullivan and Peter Sullivan to each other?

A. Nephew and uncle.

Q. They were married to two sisters?

A. Yes, Abina and Mary McAuliffe.

Q. Now Hannah Callaghan and you, have you been all your life constantly meeting as relations?

A. Yes, as long as I can remember.

Q. And you always looked upon her as first and second cousin?

A. I always knew her to be that.

1115 Cross-examined by Mr. DONEGAN:

Q. Did you know that your mother had brothers?

A. Two brothers, sir.

Q. How old are you?

A. Thirty-seven last March.

Q. You say your mother never spoke of these brothers—who told you?

A. I did not say that. I said I heard my mother speak about the two brothers, but I never saw them.

Q. Did you say in answer to Mr. Julian you never heard your mother speaking about them, in answer to his question as to what became of them?

A. I said I never heard of them when I was small, that I never saw them.

Q. How old were you when the mother died?

A. I suppose I was going on nine.

Q. You say your mother never spoke of those brothers of hers?

A. She did not speak I never heard her. She never spoke to me of them at all.

Q. Did she ever speak of John Sullivan?

A. I heard her say how Bessie Sullivan and Ellen Sullivan had a brother John.

Q. She never spoke to you of her brothers?

A. No only what I am after telling.

Q. Are you quite certain that your mother told you about a brother John?

A. Yes.

Q. You were about nine years of age at the time?

A. Yes.

1116 Q. Did you ever hear of John's whereabouts in America?

A. No, I did not.

Q. Did you ever hear of him at all?
A. No, only what Hannah Callaghan told me about him.
Q. Was that recently?
A. Yes, there was no one else to tell me; my mother was gone, and there was no other friend there.
Q. But as I understood your mother did tell you about John Sullivan?
A. Yes I heard my mother say it. We were very small little girls at the time. We were told that my mother and Aunt Bessie had a brother that went away.
Q. It was Hannah Callaghan told you about him?
A. Yes, she told me that he was gone away of course.
Q. That was within the last year?
A. No, not altogether within the past year.
Q. Did you know Bessie?
A. I did well, sir.
Q. And Ellen?
A. Yes.
Q. When did Bessie die?
A. She is dead about fifteen or sixteen years anyway.
Q. Do you know whether she left any money?
A. I heard she left a sum of £400 after her.
Q. When did you hear that?
A. I heard it a short time after her death.
Q. You knew this Bessie very well?
A. Very well, indeed.
Q. You knew she was a relation?
A. Yes, I saw her at my mother's funeral.
1117 Q. You know that Hannah Callaghan was closely connected with you?
A. Yes.
Q. Did you ever make any inquiry about this money?
A. No, I did not, sir, because I was not able to do anything to try and get it; I was very poor.
Q. Did you see any advertisement in a newspaper asking for representatives of Ellen Sylva and Bessie Sullivan?
A. I did not, sir.
Q. Did you apply here to the bank?
A. I did not.
Q. You say this money was in the bank but you did not apply for it?
A. I could not say the money was in the bank.
Q. But who told you that the money was there?
A. My father I heard saying it.
Q. Was he very poor?
A. He was; indeed, only working for his day's wages.
Q. Would this money be a great consideration to him?
A. Yes, if he went about it but he had not the means of doing it.
Q. Were you not related to the deceased?

A. I was, sir.

Q. Had you any other relations in the city besides Hannah Callaghan?

A. Not another.

Q. And the money was there in the bank for you if you took the trouble to go for it?

A. I did not, sir.

1118 Cross-examined by Mr. COLLINS:

Q. You say that Ellen was your godmother?

A. Yes.

Q. A sisters of Bessie's.

A. Yes.

Q. You are thirty-seven years of age?

A. Yes.

Q. Was Ellen married at the time you knew her?

A. Oh, yes, sir.

Q. She was Mrs. Silva at the time?

A. She was.

Q. And still she signed her name as Ellen Sullivan?

A. Yes.

Q. Were you ever in Abby Sullivan's house?

A. I was.

Q. Peter Sullivan's house?

A. Yes.

Q. Whom did you see there?

A. I saw Hannah Callaghan, my aunt, my uncle, Eilen Sullivan was there working in a room off the kitchen. I did not see Bessie because she was in situation with Mrs. Lyons, Grenville quay.

Q. You must have been very young at that time?

A. I was, sir.

Q. What age would you be?

A. Only going on seven years at the time.

Q. Your mother died two years after?

A. Yes, she did.

Q. It seems strange that you would know the Christian name of this Mr. Sullivan, and the Christian names of these Mrs. Sullivans it is not usual?

1119 A. Faith, then I would; I would tell you of younger than that. I could tell you of what occurred when I was younger than I am now. Never fear, I remember it very well.

Q. You remember Peter?

A. I do, sir.

Q. You remember the father?

A. Yes.

Q. What kind of man was he?

A. A very small, low-sized man, and blind of one eye. He took me and I slanging from school one day. He took me to the priest.

Q. Do you remember what sort Mrs. Sullivan was?
A. A low-sized, little woman, with a handkerchief on her head.
Q. And Bessie?
A. She was very smart. She was settled and used to wear a filled-in shawl at the time.
Q. Ellen Sullivan—what sort was she?
A. She was more settled-looking than Bessie, but might not be as old as her. I used to see Ellen sitting in the room and she working.
Q. She was married when you knew her?
A. She was.
Q. You did not know her when she was single?
A. I did not.
Q. Did you go to her funeral when Bessie died?
A. I did not, sir.
Q. Do you know Humphrey Sullivan at all?
A. My grandfather; I did well, sir.
Q. What was Mrs. Sullivan's name?
1120 A. Mary McAuliffe.
Q. Are you perfectly clear about that?
A. I am certain of it.
Q. It was not Julia, are you quite sure? It was not Kate nor Mary. I have a particular reason for asking; are you sure it was not Julia?
A. I am sure and certain it was Mary McAuliffe.
Q. Humphrey Sullivan and his wife lived in Gillabbey lane?
A. Yes.
Q. And they had children?
A. They had three.

Cross-examined by Mr. RIDDLE:

—. Did you ever hear of John Sullivan from the time you heard your mother speak of him until the time of his death?
A. No.
Q. Used Hannah Callaghan speak to you about the matter?
A. That he was away.
Q. How long ago is that?
A. A few years ago.
Q. It is not true, then, that they thought he was lost at sea?
A. No, sir, I did not hear.
Q. You never heard of that?
A. No, sir.
Q. Who first told you of his death?
A. Hannah Callighan I met first. She was after coming out from Mr. Blake's office at the time.

MARY JENKINS, having been first cautioned and sworn, was then examined, and testified as follows:

(Mr. JULIAN:)

Q. What is your name?
A. Mary Jenkins.
1121 Q. Where do you live?
A. 117 Grand Parade.
Q. Did you know Humphrey Sullivan and his wife?
A. Yes, I did.
Q. Where did they live?
A. In Gillabbey lane, off Gillabbey street.
Q. Do you recollect what was Humphrey Sullivan's wife's name?
A. Mary McAuliffe.
Q. Do you recollect whether she had any sisters?
A. She had.
Q. What were their names?
A. There was Peggy.
Q. Who was Peggy married to?
A. She married John Corcoran of Carrigaline.
Q. Do you recollect another sister?
A. She had a sister Bridget.
Q. Do you recollect to whom Bridget was married?
A. She was never married, to my knowledge.
Q. Do you remember another sister?
A. Yes, Abina.
Q. To whom was she married?
A. She was married to a man named Sullivan, I believe, as far as I hear.
Q. You, I believe knew Mary Sullivan—that is, Mary McAuliffe and Peggy McAuliffe, you knew them well?
A. Yes; personally; I knew them well.
Q. You saw them and spoke to them?
A. Yes.
Q. You recollect, I suppose, what family Humphrey Sullivan and Mary Sullivan had?
1122 A. Mary Sullivan, to my recollection, had a daughter Margaret and a son Denis, or Michael, and John. She had two sons and one daughter.
Q. These two sons went away a great number of years ago?
A. Yes.
Q. You lost sight of them, and you do not know where they are?
A. Yes, sir.
Q. Well, now, Peggy, who is married to John Corcoran, do you recollect meeting her at Mary Sullivan's house?
A. Yes, at Mrs. Sullivan's house.
Q. Mary McAuliffe's house?
A. I did.

Q. Do you recollect meeting some of the children of Peggy Corcoran also there?
A. I did, to know them; I knew them all.
Q. But do you recollect Ned Corcoran?
A. Certainly.
Q. You recollect him?
A. Yes.
Q. You recollect when he came from Carrigaline to Cork?
A. Yes, he came to my father's house in Brandy lane.
Q. Tell us how you recollect him so well?
A. Ned Corcoran's father had a sister, Nancy Corcoran, that is Ned's aunt, and my father got married to her a second time.
Q. That is the reason you have such a good knowledge of the Corcorans and of Mary Sullivan?
A. Certainly.
Q. You knew Ned Corcoran to be a harness-maker?
A. Yes.
1123 Q. And when he came to Cork did he stop in your father's house?
A. He did.
Q. When living at your father's house, do you recollect his visiting any of the other Sullivans?
A. Yes, he used to go over to his aunt, right across the lane and stop there.
Q. Do you recollect his visiting Abina?
A. He used visit them all round; he used go to them.
Q. And the Ned Corcoran you saw here to-day, is that the same Ned Corcoran who used to stay at your father's house?
A. Yes.
Q. And the son of Peggy McAuliffe?
A. Yes, Peggy we used to call her.
Q. You have no doubt about that?
A. Not the slightest doubt in the world.
Q. Do you know Hannah Callaghan?
A. I did not see that girl for twenty years or more.
Q. Twenty years ago you used know her?
A. Twenty years ago she was living with an uncle of hers in Evergreen.
Q. Was that uncle the husband of Abina?
A. Yes. She was living with her husband.
Q. Ned Corcoran lived with your father in Cork?
A. Yes, he was, with my father, lodging with me in Brandy lane.
Q. You knew Mary Sullivan, who was Mary McAuliffe?
A. Yes.
Q. You knew Peggy Corcoran, who was Peggy McAuliffe?
A. Yes.
1124 Q. Did you know Abina?
A. No, I did not; I never spoke to her.

Q. Did you know that Mary Sullivan had three other sisters?
A. Yes, certainly so.
Q. Do you recollect what their names were?
A. Mary, Margaret, Abby, and Bridget.
Q. Do you recollect who Bridget married?
A. No; I never heard, to my knowledge, that she was married?

Cross-examined by Mr. BLAKE:

—. Do you know what relation Humphrey Sullivan and Peter Sullivan were to one another?
A. Whether they were brothers or first cousins, I could not tell.
Q. Do you know the three sisters, Catherine Riordan, Mary Riordan, Margaret Riordan, otherwise McGrath? Do you know them to be the daughters of Margaret Riordan and John Riordan?
A. Yes.
Q. Margaret Riordan was the daughter of Mary McAuliffe?
A. Yes.
Q. How long do you know them?
A. I suppose for 45 years.
Q. Do you know them to be her lawful daughters?
A. Yes. I remember that she was married to Mr. Riordan.

1125 Cross-examined by Mr. DONEGAN:

Q. You say this Bridget McAuliffe—you knew her?
A. I did not know Bridget McAuliffe, but I heard she was there.
Q. You say you never heard she was married?
A. I was too young. I was not intelligent enough to know that.
Q. Did you know Hannah Callaghan?
A. Yes, but I did not see her for the past 20 years or more.
Q. Was she a relation of yours, or a relation of any of the claimants here—of the Corcoran family?
A. Yes, certainly.
Q. What relation is she—sister's or brother's daughter?
A. Sister's daughter.
Q. Abina is "Abby," is it not?
A. Yes, it is.
Q. Do I understand from you to say that you think Hannah Callaghan was the daughter of Abina?
A. I think so. Of course, I am not sure.
Q. Whom did Abina marry, do you know?
A. I do not know; I could not tell; I cannot say, only what I know.
Q. Do you know who the mother of Hannah Callaghan was?
A. There were four sisters there; as far as I know it was Abina.

Q. Is it not *it* likely that if Hannah Callaghan was the daughter of Abina, that Abina would be married to Callaghan?

A. Yes.

1126 Q. That Hannah Callaghan's mother was Abina?

A. I do not know that she was the daughter of Abina or not, but that there was an Abina there. Further than that I cannot tell.

Q. You do not say she was the mother of Hannah Callaghan?

A. I cannot say that.

Q. Do you know that Hannah Callaghan was a relative of Mr. Corcoran?

A. Yes, so far as I hear since.

Q. Sister's children?

A. So far as I can know.

Q. Who told you that?

A. I heard it.

Q. Who told you?

A. A female that knew them all.

Q. What is the name of the female?

A. I could not tell.

Q. Has all your information come from that source?

A. I know Hannah Callaghan to be there.

Q. Who is the female that gave you the information?

A. My own friends, as much as anyone else, would hear it. When I was called on to give information by those friends of the people that have the legacy.

Q. Do I understand you to say that any person came around to you—was this after the death of John Sullivan?

A. I do not know when he died; I was not intermixed with them at all that way.

Q. Where were the interviews that you had with those mysterious people?

A. They were not mysterious people at all.

1127 Q. Who were the people that gave you this information?

A. I got the information, of course, by hearing it.

Q. From whom.

A. From the family, of course, when they were informed of this, as well as me.

Q. You were informed of this?

A. Yes.

Q. What do you mean when you say this: "That Mr. Sullivan was sending over here for witnesses?" That his people were sending.

A. I am telling the truth, and only what I know.

Q. Do you know the nieces?

A. Yes.

Q. Who were they?

A. The Misses Riordans.

Q. The nieces of John Sullivan?
A. Yes.
Q. The deceased?
A. Yes.
Q. You know from your knowledge that they are the nieces of deceased?
A. Yes.
Q. You are certain of that?
A. I am, sir.
Q. And everything you said is as true as that?
A. Yes.
Q. Those ladies that were examined here, you know them intimately?
A. From childhood.
Q. And you are sure that they are the nieces of John Sullivan deceased?
A. I am certain.

Cross-examined by Mr. COLLINS:

Q. Do you know that Abina was a sister of Peggy's?
A. Certainly so.
Q. How did you get your knowledge of that?
A. By hearing and speaking of her.
1128 Q. You heard Abina speaking of Peggy?
A. I never knew Peggy had any children at all—I was not acquainted with her at all.
Q. How do you know that Abina was a sister of Peggy's?
A. By hearing them speak of her.
Q. Was there a sister Hannah or Julia at all?
A. No, I never heard of Julia at all, only Bridget, Abina and Peggy.
Q. You never heard of Hannah or Julia?
A. Never, to my knowledge.
Q. You never saw the Sullivans at all?
A. Oh, yes. I did not know them, but I heard tell of them. I knew Humphrey Sullivan, that was this girl's grandfather, and that was Mary McAuliffe's husband.

Cross-examined by Mr. RIDDLE:

Q. Did you know Peter Sullivan at all?
A. I heard tell of him that he was in Beamish and Crawford's brewery. I never spoke to him.
Q. That is only what somebody told you?
A. I never spoke to him.
Q. You do not know Abby, I think you have said?
A. I did not — him to my recollection.

Re-examined by Mr. JULIAN:

Q. You know those girls, Kate Riordan, Mary Riordan, and Mrs. M'Grath?

A. Yes.

Q. You know they are the daughters of Margaret Sullivan?

A. I do, sir.

1129 Q. You know that Margaret Sullivan was the daughter?

Mr. DONEGAN: I object. The witness has given her statement that these Riordans are nieces of John Sullivan.

Mr. JULIAN: That is just my right to re-examine her.

WITNESS: They are not nieces, they are second cousins.

(Mr. JULIAN:)

Q. What good is there entrapping a woman into an absurb statement like that? (To witness:) You know that Margaret Sullivan was a daughter of Humphry Sullivan and Mary Sullivan?

A. I do.

Mr. RIDDLE: Permit me to say I would like to file an objection to going over this matter that has been gone over in the examination-in-chief, and particularly to the leading manner in which the cross-examination has been conducted of counsel's own witness.

Mr. JULIAN: I do not know what your rules of evidence in America are, but I am acting within our rules of evidence, and I understand your rules of evidence are founded on our rules of evidence. On a matter that has arisen in cross-examination, you are entitled to re-examine on that matter, and that is all I am doing here.

1130 (Re-examination resumed:)

—. Now, the mother of these girls, who were examined here, was the daughter of Humphrey Sullivan and Mary Sullivan?

A. Yes.

Q. You called them nieces of John Sullivan?

A. I did. I made a mistake.

Q. You accepted the term Mr. Donegan put in your mouth?

A. I made a mistake.

Q. You say you made a mistake?

A. Yes.

Q. What relation do you understand were those girls, those women produced to-day, to the deceased John Sullivan?

A. Second cousins.

Q. When you called them nieces you made a mistake?

A. I did certainly make a mistake.

Mr. DONEGAN: I am entitled to ask a question out of the re-examination—you say that you made a mistake when you answered me that these women were nieces of John Sullivan?

A. I did.

Q. You say now that you made a mistake that they are not nieces, that they are second cousins?
A. Yes.
Q. How are they second cousins?
A. The present man that is dead, there mother was his first cousin, and that makes them second cousins I suppose?
Q. Do you know anything about John Sullivan at all?
A. I did not know anything about them.
1131 Q. Do you know his father's name?
A. No, I do not.
Q. Or his mother's name?
A. I heard it was Abina.
Q. Was that conveyed to you by the people that gave you that information recently?
A. Yes certainly by the people.

(Counsel waived the necessity for witness'es signature to her depositions.)

The court adjourned till next morning.

Second day, Tuesday, Nov. 19th.

At the opening of the inquiry Mr. Howe said:
I think I questioned no one's authority to appear here, but I would desire that the solicitors from Ireland should place on the records their authorization to appear. There have been certain waivers made, and I desire that the court should see that they are made by solicitors duly authorized.

The Consul: While the witnesses are being examined I would like that counsel should not be interrupted in any way or spoken to in any way. Mr. H. P. F. Donegan and Mr. E. Collins handed in their authority to appear which were directed to be attached to the records.

Denis Riordan, having been first cautioned and sworn, was then examined and testified as follows:

Mr. Howe: Where do you live?
A. In 2 Crone's lane.
1132 Q. How long?
A. Since I was a child since I was a year and a half.
Q. How old are you now?
A. About 56 or 57 years.
Q. How far from Crone's lane is Evergreen street?
A. About 30 yards.
Q. Does Crone's lane run up to Evergreen street?
A. Yes.
Q. Did you ever know one Peter Sullivan?
A. I did well.

Q. Who constituted the family of Peter Sullivan?
A. There was Peter, his wife, two daughters, Bessie and Ellen, John Sullivan and Hannah Callaghan.
Q. What was Mrs. Sullivan's Christian name?
A. I was very young at the time and have no knowledge of it.
Q. Did you ever see Hannah Callaghan at the house?
A. Yes.
Q. Did you ever see Hannah Callaghan speaking to Mrs. Sullivan?
A. I saw her speaking to her aunt but I don't know what appellation it was commonly understood Mrs. Sullivan was Hannah's aunt.
Q. By whom was it commonly understood?
A. By all the neighbors who lived around.
Q. How long did Peter Sullivan live in Evergreen street?
A. I think he left Crone's lane about 1854.
Q. When he left Crone's lane where did he go?
1133 A. To No. 10 Evergreen street.
Q. How long did he live there?
A. Until he died.
Q. When he was living in Crone's lane did you know him?
A. Yes.
Q. Did you know where Peter Sullivan worked?
A. Yes, in Beamish & Crawford's brewery in this city.
Q. How long did he work there?
A. As well as I remember until he was pensioned off.
Q. Do you remember him getting a pension?
A. I heard so. It was after he went to Evergreen street.
Q. Was there anything odd about his appearance?
A. He was a little man, but there was something wrong with one eye and he was partially blind.
Q. Did you know the knick name by which he was called?
A. He was commonly called Nelson in the brewery because he lost one eye.
Q. You said it was generally understood amongst the neighbors that Hannah Callaghan was the niece of Mrs. Sullivan?
A. Perfectly understood.
Q. Did you know John Sullivan?
A. I recollect John Sullivan in Crone's lane.
Q. How long did you know him?
A. I was very young; but I remember John Sullivan standing at his own door and I passing down the lane.
Q. Crone's lane where he was born?
1134 A. I remember him low-sized good block of a young man. He wore black clothes and a black silk handkerchief—a sort of sailor's handkerchief.
Q. What became of him?
A. He went to sea.
Q. Did you know his sisters?
A. Yes.
Q. What became of Bessie?

A. She went to service to Mrs. Lyons, but before that she used to sell apples at the bottom of Nicholas street, I saw her there when I was going to school to the South monastery.

Q. Did you remember Ellen Sullivan?

A. Yes.

Q. She was married?

A. Yes.

Q. To whom?

A. To a foreigner named Emmanuel de Sylva.

Q. What became of him?

A. He went to sea and died in the West Indies.

Q. Did Ellen leave any children?

A. No.

Q. Where did Bessie die?

A. I heard in Bull's asylum on the Blackrock road.

Q. I asked if you knew Mrs. Sullivan's Christian name. Did you know her maiden name?

A. I never knew her but as Mrs. Sullivan.

Q. Do you know how it was that Hannah Callaghan came to live with the Sullivans?

A. I do not.

Cross-examined by Mr. BLAKE:

Q. Do you know Humphrey Sullivan?

A. No.

Q. Did you know Mary McAuliffe who was marrid to him?

1135 A. No. I only knew her as Mrs. Sullivan.

Q. Did you know any of the sisters of Peter Sullivan's wife?

A. No.

Q. Did you know Hannah Callaghan's mother?

A. No.

Q. Or father?

A. No.

Q. All you knew was she was Hannah Callaghan and no more?

A. Yes.

(Mr. DONEGAN:)

Q. Did you know any other people living in Crone's lane?

A. Yes.

Q. When you say you recollect Peter Sullivan, his wife and family living at Crone's lane what period do you refer to?

A. They were living there in 1852, 1854, 1855, before they shifted. We had a great fall of snow in 1855. It was commonly called the big snow. That happened on the 14th February, 1854. Patrick's bridge fell about 14 months before that, I remember the time well. I remember when the foundation stone was laid. Sir John Benson was the engineer and the builder was——

Q. This is very interesting. How old were you then?
A. Twelve or fourteen.
Q. In 1854. You said your age is how much?
A. Between fifty-six and fifty-seven.
Q. Did you know this family of Peter Sullivan intimately?
A. Thoroughly well.
Q. You don't know the name of the wife?
A. I only knew her as Mrs. Sullivan.
Q. You were living in Crone's lane?
1136 A. I am there since I was an infant.
Q. Did you know any other Sullivans living in Crone's lane?
A. Yes.
Q. Who were they?
A. The second next door to Peter Sullivan there was a family, they went to California in the summer of 1855 or 1856. There were three brothers—Jerry, a tailor; John, who worked at Carey's china shop in Patrick street, and the youngest son was Michael, who went to sea, and he died of fever in the West Indies. I think he went in one of the Harley's ships, called the "Indian Queen" and commanded by Captain Belcher.
Q. What was the name of the father of that family?
A. I don't recollect, but the mother's name was Mary Sullivan. She was a cook at one of the Murphy families at the time.
Q. Was there any other Sullivan living in Crone's lane?
A. Not to my recollection.
Q. Do you know Abbey street?
A. Yes.
Q. Did you know any Sullivans living there at that time?
A. There might be.
Q. Is Abbey street far from Crone's lane?
A. Three or four hundred yards.
Q. When were you first approached in this matter and asked to give evidence?
A. I was first approached by Mr. Creedon he was directed up there by a Mrs. O'Connor who lived in Luaker road.
Q. When was this?
1137 A. In the beginning of November last year.
Q. What did Mr. Creedon say?

Mr. Howe: I object to this as incompetent.
Mr. Blake: And irrelevant.

Witness: He spoke to a Mrs. Davidson, he did not speak to me.

Cross-examined by Mr. Donegan:

Q. At that time did you hear deceased had died and left a great deal of money?
A. I heard it was in the papers.

Q. When did you hear that?
A. In November, 1900.
Q. Were you aware that American solicitors were in Cork at the time?
A. No.
Q. When did you learn that?

Mr. HOWE: I object to this as irrelevant, immaterial and incompetent and not cross-examination.
Mr. BLAKE: I thought similar question- were allowed yesterday?
Mr. HOWE: I am only preserving the record.
Mr. BLAKE: We don't mind that. Similar questions were put yesterday.

(Mr. DONEGAN:)

Q. Were you approached by any American solicitors in this matter?
A. I remember on Friday morning I was at home and a woman came down the lane and a gentleman with her. He made
1138 some inquiries down Evergreen street. They were sent up to my place. He came in and as far as I can recollect he asked about Hannah Callaghan. He asked did I know the family and I said yes.

Mr. HOWE: I object to all this conversation, it is irrelevant, immaterial and incompetent. It is hearsay.
Mr. DONEGAN: If I object to the witness' way of answering me you would probably object on the same ground that it is irrelevant and immaterial. I have allowed him to answer in his own way without interruption.
Mr. HOWE: I have to preserve my objection and that is the reason I have interposed. I have no desire to interrupt but must make my position clear on the record.
Mr. BLAKE: He does not object to his answering the question, he only wants to make out it is irrelevant.

Mr. DONEGAN: Yesterday I was interrupted during the answers given by witnesses. Now a witness was giving an answer to a question I asked him and in the middle of that answer the counsel interrupted. Now I repeat the question. Were you approached by any American solicitors in reference to this case?
A. He came to the house.
Q. One solicitor?
A. I did not know whether he was a solicitor or not?
Q. Do you know him?
A. Yes.
Q. What was his name?
A. He told me it was Mr. Wright.
Q. Did Mr. Wright tell you anything?

1139 Mr. HOWE: I object as irrelevant, immaterial and incompetent.

(Mr. DONEGAN:)

Q. Did Mr. Wright tell you anything?
A. Not exactly, he did not come to my house that way.
Q. You say he did not come exactly to your house. What do you mean telling me did not exactly tell you anything?
A. He told me nothing there, not at that time.
Q. Did he tell you anything at the later time?
A. I had no knowledge of the facts of the case at that time. I got no knowledge or instruction from him then.

Mr. HOWE: I object as irrelevant, immaterial and incompetent.

(Mr. DONEGAN:)

Q. Did he say anything?
A. I did not understand the nature of the case then.
Q. Did he tell you anything at a later time — the nature of the case?
A. No.

Mr. HOWE: I object as most immaterial and move to strike out the last answer by the witness because it was given before I had time to interpose.

Mr. DONEGAN:

Q. I must ask you this. Did you know Hanna[illegible]allaghan intimately?
A. Yes.
Q. Who was she?
1140 A. I knew her when living with her aunt and uncle as well as I recollect up to the time her uncle Peter Sullivan died.
Q. Did you know who her father was?
A. No, I had no knowledge of her people except herself.
Q. When did she come to live with the Sullivans?
A. She was there always as far as I can recollect.
Q. Would she have been in any capacity in the house in the year 1851, for instance?
A. I never knew her to be there in any capacity but a member of the family.
Q. When asked in your direct examination you spoke of Bessie, John, Ellen and Hannah Callaghan. In the year '51 did you remember Hannah Callaghan in the house?
A. I remember Crone's lane and I remember Hannah Callaghan.
Q. You remember her living in the house with these people for years?
A. I remember her living in the house in Crone's lane before they left.
Q. Before they left, and how long before?

A. They were living there many years before.
Q. Was Hannah Callaghan there?
A. Yes.
Q. How many years before that was she living with them?
A. I could not exactly tell.
Q. As far as you know from repute?
A. I could not say.
1141 Q. Was she living there for five years before they left?
A. She might, or longer.
Q. You don't know who her father or mother were?
A. No.
Q. You appear to have a very distinct recollection?
A. I have.
Q. And you were living in Crone's lane all the time?
A. I was.
Q. That is very distinct?
A. As clear as yesterday.

(Mr. HOWE:)

Q. I beg to move you to strike out the comment of the counsel as uncalled for and irrelevant.

Mr. DONEGAN: He has a marvelous memory.

Mr. HOWE: In our courts we only accept testimony of the witness on oath; we don't accept the testimony of counsel.

(Mr. DONEGAN to the witness:)

Q. You stated you did not know Humphrey Sullivan?

A. I knew no members of the family outside these I have mentioned who lived in Crone's lane.

Q. Except another family of Sullivans you told me about a while ago?

A. There was another family of Sullivans living next door to Peter Sullivan, he kept a public house. His name was James Sullivan.

Q. Was that in Crone's lane?
1142 A. No, in Evergreen street this was later. They kept as I told you a public house. A family named Saunders came to live in the house in Crone's lane. They were painters, and they afterwards emigrated to America, and it was after they went Peter Sullivan lived in their house. It was a public house kept by James Sullivan commonly called "Feather-legs Shamus."

Mr. COLLINS: This has nothing to do with the case.

WITNESS: This Mrs. Saunders and Mrs. Sullivan who lived next door were constantly at loggerheads and Mrs. Sullivan went by the name of "Feather-legs." This Saunders family went away and Peter Sullivan removed from Crone's lane down to the house.

Mr. DONEGAN: Do you remember when Peter Sullivan died?

A. He was the last of his family.

Q. Did he survive his daughters?

A. The mother died first and Ellen died between the mother and father.
Q. Was Bessie alone the survivor?
A. Yes.
Q. You knew them intimately. Do you recollect John's appearance?
A. I saw him stand at his own door one day as I told you.
Q. How old was he about that time?
A. About 18 years, I think.
Q. Growing up a young man?
A. Yes he might be 20.
Q. How did you know it was John?
1143 A. There was no other family living in the house. There could be no other family in the house. There could be no other young man there.
Q. Do you know what became of this Hannah Callaghan?
A. She is still living.
Q. When they removed from Crone's lane where did she go?
A. To Evergreen street with them.
Q. Did she live with the family of Peter Sullivan?
A. Yes she was the only one in the house when Peter Sullivan died.
Q. Did she live on there?
A. For a short time after he was buried.
Q. Did you know Bessie was in the lunatic asylum?
A. Yes, she died in it.
Q. Did you hear she had any money?
A. No, I did not.
Q. There was no rumor about it?
A. No, they died out of all the people's memory altogether.
Q. Did you ever hear John was dead?
A. No.
Q. Did you ever hear he had been shipwrecked and drowned?
A. Never.
Q. That was not a common rumour?
A. No.

(Mr. DONEGAN:)

Q. Did you, as a matter of fact, tell Mr. Wright that Mr. Blake had charge of the case of Hannah Sullivan?

Mr. HOWE: I object on the ground of it being immaterial,
1144 irrelevant and incompetent and not cross examination.
Mr. BLAKE: Could you not shorten that objection. We are getting tired of it.
Mr. HOWE: This is an American court.
Mr. BLAKE: I will be dreaming of irrelevant and other things.
Mr. JULIAN: Go to sleep and we will wake you.
Mr. BLAKE: It is at night that I dream and not in the daytime.

Mr. DONEGAN:

Q. In November, 1900, was that the time you saw Mr. Wright. Was that when he came to your house?
A. Yes.
Q. Did he visit you again?
A. Yes.
Q. On how many occasions?

Mr. HOWE: Same objections. On the ground it is not cross-examination, incompetent, irrelevant and immaterial.

Mr. BLAKE: I have a right to object. When a witness is being cross-examined and asked a question Mr Howe comes forward with these formidable words and Mr. Donegan loses the thread of the question.

Mr. HOWE: It might just as well be understood that I am going to follow the course pursued in the courts of the United States and no display of temper by counsel will have any effect or turn me from my way.

1145 Mr. BLAKE: The effect of the interruption is that no witness is allowed to answer a question.

Mr. HOWE: The proper way is to interpose before the answer is put in.

Mr. JULIAN: It is most irregular for any counsel to intervene when a counsel is representing a different interest in examining a witness. Mr. Blake had his opportunity.

Mr. BLAKE: It is most irregular for Mr. Julian to intervene.

Mr. DONEGAN: There is a good deal of interruption calculated to throw counsel off his argument. (To witness:) How many times did Mr. Wright approach you?

Mr. HOWE: I object on the grounds of it being immaterial, incompetent and irrelevant, not cross-examination, and a disgraceful examination of the witness.

Mr. BLAKE: It will nearly drive me mad.

Mr. DONEGAN:

Q. How many times did he approach you?
A. On several occasions.
Q. Did you on the first occasion give him a statement of your evidence?
A. I think verbally I gave it to him.
Q. How many times did he approach you?
A. Not very often.

Mr. HOWE: Same objections.

(Mr. DONEGAN:)

Q. How often?
A. Not very often.
1146 Q. How many times within the last year?
A. I could not exactly tell, I did not keep an account.

Mr. HOWE: Same objections.

Q. Did you see him 20 times?
A. I might more or less.
Q. Did he ever give you any money?
A. Never.
Q. You swear that?
A. Quite positively.
Q. Did Mr. Wright, to your knowledge, give any of the witnesses in this case residing in Crone's lane or elsewhere, as far as you know any money?

Mr. HOWE: I object on the same grounds of it being immaterial, incompetent and irrelevant.

Mr. DONEGAN: Let him answer the question. (To witness:) Did you tell Mr. Wright that Mr. Blake was acting for Hannah Callaghan?
WITNESS: No.
Q. Did I understand you to say that you got no money from Mr. Wright, and as far as you know none of the witnesses in this case got money?

Mr. HOWE: Same objections being irrelevant, immaterial and incompetent.

A. (Witness:) I got no money from Mr. Wright or any consideration whatever. I am an independent witness without fee or award.
Q. That is an answer to half my question, the other half
1147 is. Do you know did any other persons, witnesses in this case, get any money?

Mr. HOWE: I object on the grounds already stated.

Mr. DONEGAN: The objection is in already. The witness only answered only half my question. (To witness:) You understand the question and you understand the two parts of the question. Give me an answer.
A. I have no knowledge whatever of Mr. Wright paying any person, paying any money to any witness. I never saw him give it or never knew he gave it. I have not the slightest idea of it.
Q. Did you hear he gave it?
A. I never saw him give it to any witness or never knew he gave it.

Mr. HOWE: I object as incompetent, immaterial hearsay evidence.

Mr. DONEGAN:

Q. Did you hear he gave money to any of the witnesses?
A. Never.

Mr. HOWE: I object on the same grounds.

Cross-examined by Mr. COLLINS:

Q. You said you have a distinct recollection of Crone's lane about 50 years ago?

A. I ought to have.

Q. Were you ever in the house of Peter Sullivan's family?

1148 A. I used to run in and out of the house. I knew John Sullivan when I was a boy. He was older than me.

Q. Was he much older?

A. He was a young man, and I a little fellow running up and down the place.

Q. Did you know any other families except these two families of the Sullivans. Could you tell us about anyone else who lived in Crone's lane about 1851?

A. There were several parties there.

Q. Give us some names simply for the purpose of testing your memory?

A. There was a family living next door, a man of the name of Corcoran. There was another family next door of the name of Roche.

Q. Do you know whether Ellen Sullivan lived there?

A. She lived later on.

Q. What was she?

A. She was a housekeeper.

Q. Was she a married woman?

A. Yes.

Q. Had she any family?

A. Yes, two daughters.

Q. Had she any sons?

A. Not to my knowledge.

Q. Did you know any other family of Sullivans in Crone's lane?

A. Yes, there was John Sullivan, Dan Sullivan and Michael Sullivan.

Mr. HOWE: I object on the ground of being immaterial, irrelevant and incompetent; not cross-examination.

1149 WITNESS: I knew Dan Sullivan who lived in the last house and his sister and Mrs. Thompson, who lives at Currabinny now. Dan Sullivan lived in the last house.

Q. What age would he be?

A. He was a young man then.

Q. What would you call young? What was his age?

A. About 25.

Q. You saw John frequently standing at the door in Crone's lane?

A. Yes.

Q. What age was he then?

A. About 18 or 20.

Q. Was Hannah Callaghan living there at the time?

A. Yes.

Q. Was this family poorly off?
A. They were struggling people.
Q. How long is Bessie dead? Have you any idea?
A. About 15 or 16 years.
Q. When did you last see her?
A. It is years ago since I last saw her.
Q. Where?
A. I think it was at the father's funeral.
Q. When would that be?
A. About 28 or 29 years ago.
Q. You know nothing about Hannah Callaghan except by hearsay?
A. Except as being a member of the family. She lived there from the time she came up to the time of Peter's death.
1150 Q. Simply hearsay?
A. Simply hearsay; she was always recognized as the niece of Mrs. Sullivan.
Q. How many years was she living there?
A. I suppose 20 years from the time she came there to the time that Peter died.
Q. She was living at the time John Sullivan was there?
A. Yes.

Cross-examined by Mr. RIDDLE:

Q. When did you find out about John Sullivan's death?
A. When this rumor came round. It was published on the Press.
Q. Did you learn it in the Press?
A. I could not say altogether; I generally got the paper every day.
Q. How did you learn it?
A. The first intimation I got was from Mr. Blake's clerk, Mr. Creed.
Q. How did you learn it from him?

(Mr. Howe objected to the question as irrelevant and incompetent.)

A. He came to the house. He came inquiring about Hannah Callaghan.
Q. John Sullivan must have known Hannah Callaghan very well?
A. Yes, certainly he did.
Q. If the relationship was as you suggest it, then John Sullivan must have known it?
1151 A. Undoubtedly.
Q. Did you hear of John Sullivan being here in the year 1900?

Mr. HOWE: I object on the grounds that the evidence is incompetent, irrelevant and immaterial and hearsay.

Q. Did you hear that?
A. Yes.
Q. When?
A. Last year.
Q. Who told you?
A. I heard he was up in Evergreen street.
Q. Answer the question who told you?
A. I think it was Mr. Wright.

(Mr. Howe objected on the same grounds as irrelevant and incompetent.)

Q. Did Mr. Wright tell you John Sullivan had been in Crone's lane?
A. No.
Q. Did you know whether John Sullivan saw Hannah Callaghan?
A. No, not at that time. I believe not.
Q. Do you know whether or not John Sullivan, when he was over here, saw Hannah Callaghan?
A. I think not.
Q. Do you know anything from your own personal knowledge?
A. No.
Q. Then you are testifying to facts as you heard them from others?
A. Exactly.
Q. Don't you think if John Sullivan knew Hannah Callaghan when he left here and knew of the relationship he would endeavor to find her.

1152 Mr. HOWE: I object as incompetent, immaterial and not cross-examination. Calling for a conclusion of witness not an answer of facts.

A. (WITNESS:) If he made inquiries he could have found her.
Q. Do you know as a matter of fact that he made inquiries for relatives?
A. Yes.
Q. She was living there all the time?
A. Not in Evergreen street. She was living in Fort street, a good distance outside.
Q. Is Hannah Callaghan still known in Evergreen street and Crone's lane?
A. Yes, perfectly known.
Q. How did you know this man of whom you have spoken who was standing at the door was John Sullivan?
A. I know him intimately. I knew him to be a member of the family, standing at his father's door.
Q. Was he fully grown?

A. Yes, a young man growing up.
Q. Was he tall or short?
A. Not very tall, a short block of a man. None of the members of the family were very tall.
Q. Hannah Callaghan lived in the same house that time?
A. Yes.
Q. Did you ever hear of John Sullivan from the time you say you saw him there down to the time you heard of his death?
A. No.
1153 Q. As far as you know he was not alive at all?
A. I could not say whether he was alive or dead. I had no knowledge of it.

Cross-examined by Mr. BLAKE:

With the permission of the court I want to put a question. I want to know what is the occupation in life of Hannah Callaghan?

Mr. HOWE: I object as irrelevant, immaterial, incompetent and not cross-examination.

(Mr. BLAKE to witness:)

Q. What is her occupation?
A. (Witness:) As far as I remember she was a crochet-maker. She was making macassars.
Q. Did she ever do any begging?
A. I never saw her begging?
Q. Was she always in poor circumstances?
A. Yes, very poor circumstances.
Q. If a person went to look for her was she so unknown that there would be some difficulty in finding her?
A. There might be, but we would have no difficulty or any member of my family.
Q. To any other person she was a nonentity?
A. There was a lot of people about who knew her.

1154 Cross-examined by Mr. RIDDLE:

—. Still, if anybody wanted to find her and went to Crone's lane or Evergreen street, he would find people who could easily tell where to find her?
A. I think so, because she lived in the neighborhood a long time after Peter Sullivan died. She lived for a number of years after the uncle died next door to where I lived with a family of the name of Brien.
Q. Where has Hannah Callaghan resided since she left the former residence of the Sullivans?
A. She lived in several places. She lived for a number of years with Briens, and she lived in No. 6 Crone's lane for a long time. She had a room there.

Q. For how long?
A. I suppose a couple of years.
Q. Where did she live in the summer of 1900?
A. In Fort street, in a place called Kilaloe cottage.
Q. Where is that with reference to Evergreen street?
A. It is some distance away.
Q. Where is she living now?
A. The same place.

(Consul asked permission to ask a question.)

Mr. HOWE: I don't object if it is put on the record.
The CONSUL: Certainly. (To witness:) Were you here with Hannah Callaghan last week?
A. (Witness:) Yes.
Q. You heard a paper read in this office that you witnessed?
A. Yes.

1155 (Mr. DONEGAN:)

Q. I claim permission to ask one further question.

Mr. JULIAN: It is most irregular.
Mr. DONEGAN: I never heard anything more irregular than your form of examination yesterday.
Mr. JULIAN: The witness is already examined and cross-examined and if this goes on there will be no limit.

Mr. DONEGAN (to witness): Have you received any money from any person?
A. No.
Q. Wait until I am finished. Have you received any money from any person for the purpose of giving evidence in this case?
A. No.
Q. Or coming here to give testimony?
A. No, certainly not.

(Mr. HOWE:)

Q. You answered the consul that you witnessed a paper here the other day?

Mr. DONEGAN: Is this going on the record?
Mr. COLLINS: You refused to let consul put this on the record.
Mr. HOWE: Quite the contrary.
Mr. COLLINS: Oh, I misunderstood that.

(Mr. HOWE:)

Q. Mr. Riordan, in answer to the consul's question, you stated that you had witnessed a document, executed here; did you know what that document was?
A. Yes, it was read out by the consul.

1156 Q. It was for some money that was to be paid into the hands of Rev. Canon Fleming for Hannah Callaghan?

Mr. DONEGAN: I object to this. If there was any document executed, it can be produced to speak for itself.

Mr. HOWE: Now, the answer to the question.

A. (WITNESS:) Yes.

Q. These Sullivans, whom Mr. Donegan asked you as living in Crone's lane other than Peter Sullivan and his family, had Hannah Callaghan any connection with them at all?

A. None, whatever.

(Mr. DONEGAN:)

Q. I asked for the production of the document referred to here.

(Mr. HOWE:)

A. You won't get it.

Mr. DONEGAN: Will it be put in evidence?

Mr. HOWE: Yes, on the other side, but not here. It is mailed to America. It will be produced before the master in chancery in America.

Mr. JULIAN: I can tell them the nature of the document. This woman was in very great want, and a provision had been made for her weekly support, through the parish priest. The money is paid through me.

Mr. DONEGAN: Have you advanced the money?

Mr. JULIAN: Don't ask me any impertinent questions.

1157 Mr. DONEGAN: The witness had previously answered he knew of no money given to any person in this case.

Mr. JULIAN: This answer is perfectly consistent with the document. The money is given to Father Fleming to look after it for her.

Mr. HOWE: I give notice that I will move to strike out all these remarks as irrelevant, immaterial and incompetent, and not bring into this inquiry an examination as to the relations of consul in this case.

HANNAH CALLAGHAN, having been first cautioned and sworn, was then examined and testified as follows:

(Mr. JULIAN:)

Q. Your name is Hannah Callaghan?

A. Yes.

Q. What was your father's name?

A. William Callaghan.

Q. Mother?

A. Bridget McAuliffe.

Q. Where were you born?

A. Seven miles outside the city in the parish of Carrigaline.
Q. Had you any brothers or sisters?
A. I had. I don't remember them. My mother was mother of five when she died.
Q. Did any survive to live to manhood?
A. No, all died.
Q. Did you come to the city of Cork?
A. I was reared in the city of Cork.
Q. Were you very young when you came?
A. Very young.
1158 Q. To whose house did you come?
A. To my uncle Peter Sullivan's wife, Abina McAuliffe, who married Peter Sullivan.
Q. Was that after the death of your mother?
A. Yes.
Q. How long did you live with them?
A. For over forty years.
Q. Did you live with them up to the death of your aunt and uncle?
A. Yes, I was there at the time my uncle died. He received a letter that night from his son, John.
Q. How many cousins had you—children of Peter and Abina?
A. Three. Bessie, who died insane, was the eldest; the second was Ellen, and the youngest was John.
Q. Were you supported entirely by your aunt?
A. Yes; I was able to do crochet work.
Q. There was a great demand for that thirty years ago?
A. Yes.
Q. Do you recollect where you lived first when you came to Cork?
A. It is all ruined now; it is gone into the Church of St. Finn Barrs.
Q. Where did you live afterwards?
A. With my uncle, in Crone's lane.
Q. Do you recollect removing from Crone's lane to another house?
A. Yes, to No. 10 Evergreen street.
1159 Q. Do you remember what were the names of the two girls, John's two sisters?
A. Bessie and Ellen.
Q. What happened Ellen?
A. Ellen died in her father's house.
Q. Was she married?
A. Bessie died insane.
Q. Was either of them married?
A. Yes, Ellen married.
Q. To whom?
A. Emmanuel de Silva.
Q. What was his occupation or calling?
A. Sailoring business.
Q. Do you recollect Ellen's death?

A. Yes, I do well.
Q. Had she any family?
A. No, sir; they never had any.
Q. Do you recollect what became of Bessie?
A. She died insane, in Bull's asylum.
Q. Did she marry?
A. No, never.
Q. Was she in service?
A. Yes, at Mrs. Lyons', No. 3 Grenville quay; for forty years she was there.
Q. Did you ever visit her there?
A. Yes, I spoke to her by word of mouth. I asked her, when writing to John, to remember Hannah Callaghan to him.
Q. To whom did you ask to be remembered to?
A. To John Sullivan, my first cousin.
Q. Who did you ask to write?
A. Mrs. Lyons: When No. 10 Evergre-n street was
1160 changed, and Peter Sullivan died, Bessie was in situation at Lyons' and to Bessie all letters went. I asked her in case she would be writing, to remember me to John Sullivan. That is Mrs. Lyons you asked? Yes.

Mr. DONEGAN: I object. Mr. Wright is sitting in very close proximity to the witnesses. The witness made a statement in answer to Mr. Julian, and I call on the reporter to read that statement.

Mr. JULIAN: If you follow on the lines of yesterday, we shall get on better.

Mr. DONEGAN: The witness has changed her answer, and I ask to have it taken down.

Mr. HOWE: I move to strike out the objection on the ground that counsel is testifying in this case, and is not sworn.

Mr. JULIAN: You must do it in an inoffensive way. It is a most improper thing you have stated.

Mr. DONEGAN: I state, nevertheless, it was done.

Mr. JULIAN: Sit down.

Mr. DONEGAN: Not at your dictation.

Mr. Donegan: Not at your dictation.

(Mr. JULIAN:)

Q. Do you recollect John going away?
A. Yes, he sailed a company's boat, as they called them, at 18 shillings a fortnight.
Q. Is it one of the local steamers trading out of Cork?
A. Yes, up and down.
1161 Q. Do you recollect when he went away altogether?
A. I do well.
Q. Do you know where he went to?
A. I could not say. He sailed, and came to his father's and

mother's house after a twelve months' voyage. He brought a good portion of money with him. He slept with his father and me, and his mother and sisters slept together. Bessie was at Lyons'. He sailed again, and it appeared he was shipwrecked. He was some days on rocks and was picked up and rescued.

Q. After that he used write home?

A. Yes, regularly. He writes to the father after the mother's death, and he says, "Let me know if you want anything. I was always inclined to pay a visit to Ireland, but since my mother's death I have declined that." They would rather have one toe of the mother than the whole of the father.

Q. You said after father's death the house was given up in Evergreen street?

A. Yes, his daughter Bessie sold everything in the house.

Q. Where used John's letters go after this?

A. To Mrs. Lyons', where Bessie was.

Q. Before John went to sea, do you recollect had he any employment in Cork?

A. Yes, when he was a grown up young lad was at some jeweler's shop in Cork, Patrick street.

Q. Tell me where it was and I will give you the name?

1162 A. It was near the Weslyan chapel. (After a pause:) Breton's is the name.

Q. Was he there for any time?

A. He was a grown up boy; I could not say how long he was there. It was a sister of Bob Ring's who was in Beamish & Crawford's brewery who was married to Mr. Breton.

Q. Do you recollect, was he employed anywhere else?

A. No, I do not.

Q. Do you know where Peter Sullivan was employed when you were living with him?

A. In Beamish & Crawford's brewery. I carried the breakfast to him?

Q. You carried the breakfast?

A. Yes, I used to carry the breakfast to him in '48.

Q. Do you remember him leaving the brewery?

A. Yes; he was paid a pension of 9 shillings a week.

Q. Up to his death?

A. Yes; it was on a Friday he last received it, and died on a Wednesday following. They were very kind to me; he used to bring home his own things, tea and sugar, and pay the rent of the house, 2 shillings a week, to Mr. Burrowes, who is dead and gone, also.

Q. When you were living there with Peter Sullivan and his wife, do you recollect any other relatives of yours or theirs coming to the house?

A. No, I never heard of a brother, sister, or relative, belonging to him, but I heard of one William Sullivan, who was a pensioner from Lyons' establishment.

1163 Q. Do you remember any relative of theirs coming there?
A. No, they were very strange people, and made no freedom with others.
Q. Do you remember the name- of your mother's sisters?
A. Yes, I remember Mary McAuliffe, Peggy McAuliffe, Bridget McAuliffe, was my own mother, Abina or Abbey.
Q. Who did Peggy marry?
A. I heard she married some man named Corcoran, outside her own district in Carrigaline.
Q. Do you recollect Peggy McAuliffe?
A. I heard of her, but I never saw the woman.
Q. Did you see any of their children?
A. Never, sir; I heard of one little girl there was.
Q. We heard that yesterday. Do you remember any of her sons?
A. No. The family all around were very distant, very quiet, and they were always silent in themselves. My aunt Abina and Bessie and Ellen and myself never made any freedom at all. They used be angry with me, and used say I was too free making.
Q. When Peter died, where did you go to?
A. I took a room when my uncle's house was given up. I would not leave my uncle's house, if Mr. Burrowe allowed me to stop there.
Q. Where was the room? In Tower street?
1164 A. Oh, no, I took it in Crone's lane; it was an old bachelor was there. I took it from one Mrs. Quinlan. She is dead and gone, too.
Q. Where did you remove from Crone's lane?
A. To a place called Churchstown, Killaloe place.
Q. Are you now residing at that place?
A. Yes, in the very same place.
Q. When you were living with your uncle's people, do you recollect being introduced to one of your cousins?
A. I never knew them until this affair came. It was I traced up this case to Mr. Blake.
Q. Do you remember when you last heard that John Sullivan wrote from America?
A. That was many years ago; I could not say. That was between Mrs. Lyons and John, ever since No. 10 Evergreen street was changed. It was there the letters used to go.
Q. You are aware he used to write to Mrs. Lyons?
A. Yes, regularly. I put the question to her, I said to her, "When you are writing next, will you remember Hannah Callaghan to him, and when he will hear the name Callaghan, he will know I am there." She (Mrs. Lyons), turned and looked me in the face, and said, "You are like Bessie."
Q. It was after Bessie had gone to the asylum that you spoke to Mrs. Lyons?
A. Yes. Mrs. Lyons said her mind was entirely astray.

Q. You knew John was writing?

A. Yes.

1165 Q. You were aware he was still corresponding with Mrs. Lyons?

A. Yes, sir.

Q. (Mr. DONEGAN:) I object. It is mere hearsay, this witness talking of letters being written to Mrs. Lyons.

Mr. JULIAN: Do you know John came here some time ago?

A. I heard two years ago last May he visited the city of Cork, and took a portion of money belonging to Bessie. He walked up as far as the cross at Evergreen, where he was reared. It was a Mrs. Lucas lived where my aunt and uncle died. I heard he was speaking to a Mrs. Dooley, and she remembered nothing after all this time. Years and time alter, and the people had separated.

Q. Did you ever hear whether your uncle Peter Sullivan had any brothers or sisters?

A. No, I never heard a word about it. All I ever saw was one cousin, William Sullivan, who lived in Dean street, who was a pensioner from Lyons' establishment. He died in the North infirmary. There was a messenger knocked at the door; I answered the door and heard the message. I said, "Uncle, there is a messenger here from William Sullivan, saying he is in the North infirmary; he wishes you to go and see him."

(Mr. BLAKE:)

Q. Did you know Humphrey Sullivan?

A. Yes, I did. My aunt Mary's husband.

Q. What was he to Peter Sullivan? Was there any relation?

1166 A. I think one was the nephew and the other the uncle.

Q. Which was the uncle?

A. Humphrey was the elder.

Q. Were they married to sisters?

A. One was married to Mary, and the other to Abina McAuliffe.

Q. Mary was the sister of Abbey?

A. Yes.

Q. I believe when she married Humphrey Sullivan she had three children?

Mr. DONEGAN: I object to the form of the question. The answer is suggested by the question.

Cross-examined by Mr. BLAKE:

Q. How many children had Mary McAuliffe?

A. Three—Peter, Denis, and there was also Margaret.

Q. What happened to Peter?

A. I could not say; he went across the Atlantic.

Q. What about Denis?

A. He died away. He went away in a steamer after leaving the county and city club.

Q. How many years ago?

A. I suppose he is gone thirty years.

Q. Margaret, was she a first cousin?

A. Who is Margaret?

Q. Daughter of Humphrey Sullivan?

A. Humphrey Sullivan had only one daughter.

Q. Is not she your first cousin?

A. Yes.

1167 Q. Whom did she marry?

A. One John Riordan.

Q. How many children had they?

A. I could not say what family they had, but she was not seven months in her grave when he made a second marriage.

Q. How many children were left with her, how many do you know?

A. I do not know but one. She is a married woman, married to one M'Grath.

Q. Has she any sisters?

A. I could not say She had two.

Q. What are their names?

A. Don't ask me a bit about them. They are servants in the city. I know McGrath's wife and that is all I know.

Q. What is her name?

A. I think she is called after her mother, Margaret.

Q. Don't you know the names of the others?

A. No, I never gave either the time of day.

Q. Who sent for you?

A. Mr. Creedon came to me and I gave him instructions.

Q. Mr. Blake was acting for you for some little time I believe?

A. I gave him the information first as to what my relationship was.

Q. Were you not in Mr. Blake's office nearly every second day?

1168 Mr. Howe: I object as immaterial, and not proving anything.

A. (Witness:) I was in his office, I could make very free there. I could make more freedom than in the other offices.

Q. Was Mr. Blake a nicer man?

A. He was. It was Mr. Creedon I was speaking to. He first found me out.

Q. Afterwards you saw Mr. Wright?

A. Yes. Mr. Wright then came into the city of Cork.

Q. Was that about a fortnight after you saw Mr. Creedon?

A. Long more than a fortnight.

Q. Was it three weeks or a month?

A. It was more.

Q. Were the two Riordans in the office with you?

A. There was only one person in the office with me, Mr. Wright.
Q. Was Denis Riordan?
A. He was.
Q. In Mr. Blake's office?
A. He was.
Q. When you met Mr. Wright did you tell him Mr. Blake had the case in hand?
A. No. I said not a word, Mr. Wright pulled his papers and his bonds and he laid them on the table in the Victoria hotel.
Q. Did you sign any document then?
A. Yes.
Q. Did you know what was in it?
A. Yes.

Q. Did you sign any other document?
1169 A. I signed for Mr. Wright and he said "Any person recovering this property for you, are you willing or inclined to give half?" and I said "Yes."
Q. Did you sign a document in Mr. Julian's office?
A. No, he never asked me to put a pen to paper.
Q. If Mr. Julian wrote to me stating you signed a contract in his office would that be correct?
A. No, I signed no document in his office.
Q. Was Father Daly there at the time?
A. No, we went to Father Daly at the South parish. We did not care what clergyman was there. Father Fahy was away in Maeroom and we got Father Daly.
Q. At whose office did he attend?
A. Mr. Julian's office.
Q. On that day did you sign a document?
A. Not a bit.
Q. Any document?
A. I did not sign a document. Oh, yes, I did sign a document in Mr. Julian's office.
Q. When there, did——

Mr. Howe: I object to all this cross-examination on the ground that it does not tend to prove any issue in this case. This is entirely a question of heirship and a nuncupative will. This is irrelevant, immaterial and incompetent, not cross-examination.

(Mr. Blake:)

Q. On the day you went into Mr. Julian's office did you also go into Mr. Blake's office?
A. Faith I did in the evening after coming from the hotel. I went to Mr. Blake's office.

Q. Did you tell me you had been with me?
1170 A. I persuaded you I did, I thought I was, I made a mistake in Mr. Julian's office. Mr. Wright sent a car to Fort street for me.

Q. You thought it was to Mr. Blake's office you went?

A. Yes. I made a mistake, I tell you I said there was an American solicitor here to-day and he is in the Imperial hotel. A woman like me can't know these things. I saw Mr. Wright in the Victoria hotel.

Q. It was afterwards that you discovered that Mr. Wright had taken you not to Mr. Blake's but to Mr. Julian?

A. He took me to his own place; they have their own way, you know.

Q. Up to that time did you say anything to Mr. Wright about Mr. Blake?

A. No, I didn't.

Q. Did you speak about Mr. Blake advertising in the papers?

A. It was Mr. Wright put me on the papers, and children now come after me asking, "Will you give us a sovereign, Hannah"?

Q. When there was an advertisement in the papers for the next of kin of John Sullivan was it Mr. Blake's name was to it?

A. It was he sent his man for me.

Q. Did you tell Mr. Wright at any time that Mr. Blake was in the case?

A. I made no remark of Mr. Blake at all.

1171 Mr. HOWE: I object as incompetent, irrelevant, immaterial. I have stipulated here that all the witnesses whom we have produced and examined should be paid by us until they are your witnesses. That holds good as to cross-examination but that cannot go on if there is this abuse of the rules of examination. The question is who are the heirs, and it makes no difference in proving the issues as to who was first employed by Hannah Callaghan. I don't think we should be compelled to pay for a fishing inquiry for the purpose of ascertaining whom Hannah Callaghan employed.

Mr. BLAKE: The next question I ask you is did you come back again into Mr. Blake's office?

A. I did. I used to be in Mr. Blake's place every day.

Q. Did you want Mr. Blake to take up your case again?

A. I asked him to write to America and say Hannah Callaghan of Ireland was poorly off. That was a mistake, for there are thirty-two counties in Ireland.

Q. Did you say you did not want to have anything to do with Mr. Wright, and that you would prefer Mr. Blake to go on with the case?

A. No, I said no such thing. I asked him to write about me, if he was sending to America to say that Hannah Callaghan was very poor in Ireland.

Q. What took you in to Mr. Blake's office?

A. I went there.

Q. What for?

1172 A. I often went there. I could make much freedom.
Q. Did you at any time ask Mr. Blake to take up your case?

Mr. HOWE: I object as immaterial, irrelevant, and incompetent and move to strike it out.

Cross-examined by Mr. DONEGAN:

Q. Do you know where your father and mother were married?
A. I do not know about my father but I know that it was poor Humphrey Sullivan who took my poor mother away to the Botanic Gardens and placed her in the poor ground.
Q. When were your father and mother married?
A. Oh, faith, I could not tell you. You have it in my mother's marriage lines.

Mr. JULIAN: That is an absurd question. Since she was not in existence at all then.

(Mr. DONEGAN to witness:)

Q. When were you born?
WITNESS (to Mr. Wright): What day was it I came in from Carrigaline, Mr. Wright? Denis Riordan was out there to get it.
Mr. DONEGAN (to witness): Don't appeal to Mr. Wright.
WITNESS: Mr. Wright had to go to Carrigaline for my baptismal lines.
1173 Mr. HOWE: It will be admitted that we have made all investigation possible.

(Mr. DONEGAN:)

Q. Is William Callaghan your father?
A. Yes, and Bridget McAuliffe was my mother.
Q. When did your mother Bridget McAuliffe die?
A. Oh, it is fifty years ago.
Q. Was she dead before you went to live at Crone's lane?
A. Yes.
Q. And was your father dead?
A. Yes, she had not a trace of my father.
Q. Did you know when you were living with Peter Sullivan and Abina Sullivan, a man named Corcoran?
A. No, sir. He was outside the city away from us entirely in Carrigaline.
Q. Did you know him?
A. No.
Q. Did you ever see him?
A. No, I do not know was he there at all.
Q. Not to your knowledge?
A. I remember a woman I heard tell of named Marie Corcoran.

She was a servant here in the city. She got married, and I am told she died pregnant in America with her first child.

Q. Did you ever see Edward Corcoran?

A. Never, sir, until about twelve months ago when I saw him at this consul's office.

Q. Could he have gone to Crone's lane to the house Peter Sullivan and Abbey Sullivan lived in?

1174 A. He might have gone unknown to me. I never recognized him there.

Q. Did you ever hear him spoken of there?

A. Not between my aunt and uncle. I never heard this man spoken of.

Q. You say you remember the names of Bessie and Ellen?

A. Oh, to be sure. I remember my first cousins well. Why would I not remember Bessie and Ellen and John who died across? Why not I remember them?

Q. Did you know John well?

A. Oh, as well as I know myself. I walked up Evergreen street with him after his twelve months' voyage when he came into his father's house. I walked up part of the road with him.

Q. Was that his first voyage?

A. I think it was.

Q. How old was he then?

A. I could not really ascertain.

Q. Was he a very young man?

A. A smart young lad he was. I walked up part of the street into his father and mother's house. He slept in the front room with his father and his mother and myself, and his sisters slept in the back room and we had a great oration that time on account of the son coming home after the twelve months' voyage. John came over to me and he leaned over my shoulder and gave me what was in the glass. Oh, I know John well. I loved John as my brother, and I think if I heard an angry word said to him I would

1175 eat up the ground where it was said.

Q. Do you know how to read and write?

A. No, sir.

A. No, sir.

Q. Do you remember meeting Mrs. Lyons when Bessie was in the lunatic asylum?

A. I went to the house to her when she was in Grenville quay. I am told she is out of that these years. I went to the house to her and she told me that the mind of poor Bessie was entirely astray, and she turned and looked into my face and she says, "You are like Bessie."

Q. Did she say anything else?

A. Not a word. Then she was in the asylum between the city and the county of Cork.

Q. Did you see Mrs. Lyons after?

A. Not very often then. I was very strange there although my first cousin was there forty years.

Q. Do you recollect meeting her on any other occasion than the one you refer to?

A. I told that the number 10 Evergreen street was changed and I said to her that in case she was writing to John to kindly remember Hannah Callaghan to him.

Q. When did you tell her that?

A. I could not tell. I have got no memory.

Q. Did you know Mrs. Lyons well?

A. Well, not very well.

Q. How long though is it since you told Mrs. Lyons that, in or about?

A. I could not say.

1176 Q. Is it 40 years?

A. No.

Q. How many years ago is it?

A. About 20 or 30 years.

Q. When did you last see Mrs. Lyons?

A. I did not see Mrs. Lyons these years. I did not see her since I spoke those last words to her.

Q. Describe her.

A. I wrote a few lines to her after speaking to her by word of mouth. I asked her in case she would be writing to John to be kind enough to remember Hannah Callaghan to him.

Q. Do I understand you to say you wrote to Mrs. Lyons?

A. After the word of mouth I wrote to her and put No. 2 Crone's lane on it. She never answered it. I suppose she had her own business to attend to. She is a young widow. I remember her in the early days. Mr. Lyons died after five days' illness. She was a Miss Cunningham.

Q. Do you know what she is like?

Mr. HOWE: I object to this as incompetent, irrelevant, immaterial, and not cross-examination.

Mr. DONEGAN (to witness): Do you know what she is like?

(Mr. Howe again objected on the same grounds.)

Mr. DONEGAN (to witness): What was Mrs. Lyons like?

A. I could not say. I never took her photograph.

1177 Q. Give us an idea as to what she was like?

A. I never spoke to her three times in my life.

Q. Was she a small woman?

A. I could not say.

(Mr. Howe again objected as incompetent, immaterial and not cross-examination.)

Mr. DONEGAN (to witness:) Was she a small or a tall woman?

(Mr. Howe again objected and added—This is intended to encumber the record.)

Mr. DONEGAN (to witness:) Was she small or tall?

A. She was middle sized. A slight sort of woman.

Q. Do you know anything else about her appearance?

A. I don't remember.

Q. You don't remember whether she was large or small; her eyes, the colour of them, or anything like that?

A. No, what did you want Mr. Creedon bringing down that strange woman yesterday, the stepmother of Margaret Sullivan.

Q. Did you ever hear that John Sullivan was drowned?

A. He was never drunk, sir.

Q. Did you ever hear it?

A. No, he was a sober, correct young man. There was none of our family ever took a tumblerful of porter.

Q. I am afraid you misunderstand me. Did you ever hear that John Sullivan was drowned?

A. No, I never heard he was drowned, but I heard some-
1178 thing that he died in whatever city he was in. He wrote to his father one time and he says, "I am going away now, father, to purchase some goods," whatever business he dealt in over—that he was going away to buy some goods.

Q. Did you see that letter?

A. I did, sir. My uncle got it, I could not say what was between them.

Q. You describe the letter. Do you know what he said in the letter?

A. No, sir.

Q. Did you ever see it?

A. No, sir, my uncle told me what he said, them few words—sure, I could have bundles of them if I thought there was anything like this to turn out. There was nobody in the house but myself and my uncle. I was there the night he drew his breath. A Mrs. Brien used to come to me at night. They were very strange people, you could not make so free with them.

Q. When did Peter die?

A. Peter is dead these seven and twenty years. He was in Beamish & Crawford's brewery. They will tell you when he got pension.

Q. He died in 1873?

A. That is it, sir.

Q. Was it then in 1873 that you say that Bessie sold out what was in the house?

A. She did, sir. That was her father's property; of course, she could do what she liked with it. Who could interfere with the father and the child?

1179 Q. I heard you state in your direct evidence that in the year 1848 you brought his breakfast to him?

A. Oh, yes, before the bridge fell—whatever time that was.
Q. How long after that did you live with him?
A. For years.
Q. How many years?
A. I lived with him up to the time my uncle died.
Q. How many years previous to that did you live with him?
A. I could not tell you. I was there the night my uncle died. I took the last spit from his mouth, with respect to you. He was ordered by Dr. Beamish to change his drink from whiskey. You know he was an old brewery man—from whiskey or porter or whatever he used to drink, to gin, whatever it is. He called me one day and "Hannah," says he, "would you call me Bessie?" "I will sir," says I, and I went over to Grenville quay and asked for Bessie. Bessie appeared to me. Mrs. Lyons was out at a marriage or a christening or somewhere.

Mr. JULIAN: Don't let her make these rambling statements.

Mr. DONEGAN (to witness): Did you say that you knew John Sullivan wrote to Mrs. Lyons?

A. Oh, he wrote frequently after his father's death; she wrote to me and asked me did John send me anything? A little, says I.

1180 Q. How long has Mrs. Lyons been away from Greenville quay?

A. I could not say. I thought she was in the same place until this gentleman (Mr. Wright) found out. I had no freedom with Mrs. Lyons whatever.
Q. Do you know where she last heard from John?
A. Oh, yes, it was after we changed to 10 Evergreen street.
Q. And I understand that it is about 20 years ago that you changed to Evergreen street?
A. Yes.
Q. After that, all the letters addressed to Bessie were changed as you state?
A. Yes, I told Mrs. Lyons.
Q. What association had Mrs. Lyons with Evergreen street?
A. Nothing, only Bessie being a servant of hers.
Q. You say he wrote to Mrs. Lyons?
A. It is where his sister was, that is the reason.
Q. How do you know that?
A. I knew it well since Evergreen street was changed. I spoke to Mrs. Lyons since Evergreen street was changed. It is her letters were changed.
Q. That was to be the address of the letter in the future. Did you know that anything did come?
A. I did.
Q. And were you told that they were coming there?
A. Why would I not know where my first cousin was.
Q. Used you often go to Bessie Sullivan?

A. Very seldom; only when the father sent me a message
1181 to his daughter. The father asked me to call Bessie for him, and I went to Bessie—says I, "Your father wants you." She

said that the minute Mrs. Lyons came in she would go to her father. It was not 20 minutes before she was with her father. I cannot tell what passed between them; that was their own affair.

Q. You say you were never introduced to your cousin?

A. I knew my cousin well. Was not I on the same floor with them, their father and myself—why would I not know them?

Q. But your second cousins?

A. I know nothing at all about them.

Q. Do you recollect when Bessie first came into the lunatic asylum?

A. I heard she was there. A neighbor came in to me and said that one of the little Sullivans of Crone's lane was in the asylum. It was a woman met me who was coming from the English market that told me.

Q. Do you remember when she died?

A. Mr. Wright brought in 14 years in the asylum.

Q. You say you heard that John Sullivan came to Cork?

A. Yes, sir, May twelve months.

Q. Who told you?

A. Mr. Kennedy of the North Main street.

Q. May, 1900. Did you meet anyone who knew him to your knowledge?

1182 A. I heard he came up to where we used lived and asked a woman if she remembered a straw house there. It was a straw house then, but it is slated now. And I heard the woman saying that he had a soft hat on his head and that he said, "I cannot see anyone of mine, and I am looking for one member." That must have been myself.

Q. Who was the woman?

A. A Mrs. Connell.

Q. Do you know if she is here in Queenstown?

A. No.

Q. Do you know if she is coming here from Cork?

A. No.

Mr. HOWE: I object to this as trying to conduct the plaintiff's case, and I move to strike out the answers as not being within the bounds of professional etiquette.

Mr. DONEGAN (to witness). Do you recollect stating an answer to Mr. Julian that a woman named Dooley spoke to you?

Mr. JULIAN: I did not mention any Mrs. Dooley.

WITNESS: I am a very old woman. All I want is rest now and to die.

(Mr. DONEGAN:)

Q. Mr. Julian—it may have been Mr. Blake—asked you if John Sullivan met anyone in Evergreen, and I understand you to say that he met Mrs. Dooley.

A. No, sir. Mrs. Dooley was not there at all.

Q. Was Mrs. Dooley a neighbor?

A. She was outside it altogether. She disremembers it altogether.

1183 (Mr. Howe objected as irrelevant, immaterial and not cross-examination.)

Mr. DONEGAN (to witness): Do I understand you to say that Mrs. Dooley knows nothing about it?

A. She was not in the neighborhood at all. In twelve months or six months there are many changes in a neighborhood.

Mr. JULIAN: This is the first I heard of Dooley.

(Mr. Donegan appealed to the stenographer, who stated that the name of Dooley was mentioned by the witness.)

WITNESS: John Sullivan, Peter and my aunt Abbey, they are all the members we knew. The outside members I don't know at all.

(Mr. DONEGAN:)

Q. Do you know this Mrs. Dooley?

A. Oh, I do. I heard that John was there and asked her a few questions.

Q. Who was it told you that John was there and asked her those questions?

A. I don't know; I heard so many things.

Q. Do you know Mrs. Dooley?

A. I do, sir.

Q. And you have already told us that you loved John?

A. Oh, yes, beyond the world. All I know is John, Bessie, Ellen, and my aunt, my uncle. That is all I know belonging to me.

1184 Q. Did you go to see Mrs. Dooley when you heard that she had been speaking to John?

A. No.

Q. Until you heard that Mrs. Dooley saw your cousin John, whom you loved, you had not heard of him?

A. He walked down Evergreen and said he could not see any member from home.

Q. Did you go to ascertain whether he did say anything? Did you go to see Mrs. Dooley?

A. No, sir. There is a Mrs. Cowhig near who can tell you.

Q. John Sullivan came home in 1900?

A. I could not say, faith.

Q. You told me a moment ago that he came home May twelve months ago?

A. I heard that he did.

Q. When did you hear that and from whom?

A. I heard it from Mrs. Connell.

Q. Did Mrs. Connell say she saw him?

(Mr. Howe again objected as incompetent, irrelevant and hearsay.)

Mr. DONEGAN (to witness): Why did you leave Mr. Blake?

(Mr. Howe objected as incompetent, irrelevant and immaterial.)

Mr. DONEGAN (to witness): When you met Mr. Wright, what did you do?

A. When Mr. Wright came into the city he came to me.

1185 I put no questions to him. Then he drove me to the hotel and he pulled out his papers and bonds and he said, "Any person recovering this property, are they entitled to half?" I then put my hand to the paper.

Q. Did the conversation occur in the Victoria hotel?

(Mr. Howe objected as irrelevant.)

Mr. DONEGAN (to witness): Was there anybody else there?

A. Nobody but myself and Mr. Wright.

Q. You had driven to the Victoria hotel?

A. Yes.

Q. Had you been driving with Mr. Wright?

A. Yes, I was on the car with him.

Q. And where did you come from?

A. From 2 Crone's lane. He was there inquiring if Hannah Callaghan was dead or alive. He was told he could find her at Davidson's house.

Q. Did Mr. Wright ask you to drive with him to the Victoria hotel?

A. He understood his own business.

Mr. HOWE: I hereby give notice that I will move to tax against Marie Carrau all costs of this cross-examination on the ground that it is encumbering the record and is immaterial, and irrelevant, and cannot prove any issue in this case.

Mr. DONEGAN: I will cross-examine and I am not a bit afraid of the threat.

Mr. HOWE: It is not a threat at all. It is only a legal motion, made in legal procedure.

1186 Mr. DONEGAN (to witness): Do you recollect that day in the Victoria hotel?

(Mr. Howe again objected.)

Mr. DONEGAN (to witness:) You say Mr. Wright pulled out papers and bonds? What do you mean by that?

A. That is his own affair.

(Mr. Howe again objected on the same grounds as before.)

WITNESS: He said, "Anybody who recovers this property from you gets half," and I gave my name.

Mr. DONEGAN: Did you sign any paper then?

(Mr. Howe objected as irrelevant, incompetent, not cross examination.)

WITNESS: I did sign a paper, what paper he put to me I signed.
Mr. DONEGAN: And you say there were no people present?
(Mr. Howe objected as irrelevant and incompetent.)
WITNESS: No one but himself and myself.
Mr. DONEGAN (to witness): And you cannot read or write?
A. No, sir.
Mr. HOWE: Do you propose to file a bill on behalf of Miss Callaghan to set aside this contract? If that is your purpose, that might be relevant.
Mr. DONEGAN: I am not going to disclose my purpose and no interruption will make me disclose it.
1187 Q. (To witness:) Was Mr. Wright on that day hospitable to you?
A. Not a bit.
Q. Did he give you a drink?
A. Oh, Lord! He never presumed to speak of the like.
Q. I suppose you would look upon it as rather an offense if he did speak to you about it?
A. No, sir, I lived before I saw Mr. Wright, and I could get my glass of porter before I saw him.

Mr. HOWE: I now desire to give notice that I will move before Judge Handford at the hearing of this case to strike out all this cross-examination on the ground that it is examination which is against all professional etiquette, which appears to me for the purpose of filing a bill on behalf of those people to set aside these contracts, and that it is the most disgraceful re-examination I ever witnessed in a court of justice anywhere, and I desire now to give notice that I will move to tax up all costs of it against Marie Carrau.

Mr. DONEGAN (to witness): Did Mr. Wright ever give you any money?
A. Never a penny piece. I did not require it. I had to live before ever Mr. Wright visited the city.
Q. Did he ever give you any money in the hotel, or afterwards, or elsewhere?
A. No, sir.
Q. You say in answer to me that he never gave you any money?
A. No, sir.
Q. Do you swear that?
A. Yes.
1188 Q. And you are on your oath?
A. Yes, sir, I would swear it. It was Mrs. Davidson lent me a few shillings when I wanted it.
Q. To your knowledge has Mrs. Davidson received any money from Mr. Wright or anybody else for you?
A. I never heard of it.
Q. Has any money been given to anyone for you?
A. I never heard of it.

Q. Have you got any money lately from anybody?
A. I never got money since Mr. Wright met me.
Q. Did Canon Fleming give you any money?

(Mr. Howe again objected.)

WITNESS: I don't know where Canon Fleming lives. I don't want money to be given in anybody's name for me. I will have no underhand dealing. If I get money I want it in my own name.

Mr. HOWE (to Mr. Donegan): We will produce Canon Fleming here.

Mr. DONEGAN (to witness): How much money has Mrs. Davidson given you?

(Mr. Howe objected as irrelevant, incompetent and not cross-examination. If I were to sit here for six years I will make the same objection.)

Mr. DONEGAN (to witness): What money did she give you?

WITNESS: When I would be going away she would often give me a bit of dinner long before I heard of this man (pointing to Mr. Wright).

1189 (Mr. DONEGAN:)

Q. Has there been any increase in her attention to you lately?

(Mr. Howe objected as irrelevant, incompetent and not cross-examination.)

WITNESS (to Mr. Donegan): No, sir.

Cross-examined by Mr. COLLINS:

Q. Do you remember the time you went to see Mrs. Lyons?
A. Yes.
Q. And you spoke to her about John in America?
A. Yes. He was in the sailing business; I can't remember; it is over 20 years ago.
Q. Where were you living at the time, will you tell me?
A. I was living down in Abbey street.
Q. Do you recollect how long it was Bessie was in the service of Mrs. Lyons?
A. For 35 years before Mrs. Lyons was married she was in the service of the old Mrs. Lyons.
Q. You said John sailed in a steamer at eighteen shillings a fortnight?
A. Yes, in a company boat.
Q. Did he come back and forward to Cork?
A. Yes sir.
Q. How long was he a sailor coming to Cork and back?
A. He was not long, no more than twelve months.
Q. What age was he about then?
A. I suppose he was about 16 or 18 when he went away for good.

He was a smart young man and he ought to be good. He
1190 sent them money. Since they would not depend on nine shillings a week from Beamish & Crawford's brewery.

Q. Do you know William Sullivan a pensioner?

A. He died in the North infirmary.

Q. Was he married?

A. No, sir, he was never married. That was the only other member I ever saw belonging to Peter Sullivan.

Q. Did you ever know anybody of the name of Sullivan in your time in Crone's lane?

A. No, there may be Sullivan unknown to me. I did not know them. I only knew Peter Sullivan, his wife and his two daughters and a son.

Q. And you lived for over 20 or 30 years there?

A. Yes, they were strange people. They never made any freedom with anybody. They would scarcely open the door they were so distant.

Q. Did they make any freedom with their relatives?

A. Oh, they made freedom with their relatives.

Q. If they made any freedom with others would you not know it?

A. There was one night before my uncle died one of those Riordans came down when their grandfather was in the Union hospital, that was Mary McAuliffe's husband. Some of these girls came to the door and asked for a couple of pennyworth of tobacco from Peter Sullivan, and there was a relationship between Peter Sullivan and Humphrey.

Mr. JULIAN: Don't let her be wasting her time with those rambling statements.

1191 Mr. RIDDLE: I think that any question I would ask her would be carrying her over the same ground, and in the interest of the record I will not ask her anything in cross-examination.

Mr. JULIAN (to witness): You stated that having given a verbal message to Mrs. Lyons that you then wrote to her?

A. Yes.

Q. Who did you get to write to her?

A. Dear knows! I could not tell you who wrote the letter for me.

Q. Was it someone who wrote for you?

A. Yes, sir.

Q. And you cannot read or write yourself?

Q. No, sir; I got some person to write a few lines for me.

DANIEL BURKE, being first cautioned and then sworn, was examined and testified as follows:

(Mr. JULIAN:)

Q. What is your name?
A. Daniel Burke.
Q. Where do you live?
A. 29 Millerd street.
Q. You are a shoemaker by trade?
A. Yes, sir.
Q. Do you recollect where you spent your boyhood or infancy?
A. Yes.
Q. Where did you live then?
A. Evergreen street.
Q. With whom?
A. My father and mother.
Q. When you lived in Evergreen street did you know Peter Sullivan and his family?
A. I did well, sir.
1192 Q. Of whom did his family consist?
A. His father, mother, John, Bessie and Ellen.
Q. Do you know where Peter was employed?
A. In Beamish & Crawford's brewery?
Q. Was there anyone living with them besides their children?
A. There was Hannah Callaghan.
Q. As long as you know them, do you recollect Hannah Callaghan living there?
A. Yes, sir.
Q. Where did you go to school?
A. The South Monastery, sir.
Q. Did any of Sullivan's family go to school with you there?
A. John, sir.
Q. Were you, therefore, very intimate with John?
A. Oh, yes, sir.
Q. Do you recollect John going to sea?
A. I do, sir.
Q. Do you recollect whether he came back after going first to sea?
A. I do, sir.
Q. He did come back to Cork?
A. Yes, sir.
Q. Do you recollect him finally going away?
A. I do, sir, I never heard of him afterwards.
Q. And now what were the names of the sisters?
A. Bessie and Ellen, sir.
Q. Do you recollect whether either of them were married?
A. Ellen was married.
Q. Do you remember what her husband's name was?
A. A foreign sailor.
Q. You don't recollect his name?

A. It was either Silva or Scillas.

1193 Q. Did the other girl marry at all?

A. No, sir.

Q. Do you know what became of her, Bessie?

A. No, sir.

Q. Up till what time did you live in Evergreen street?

A. Well, I lived there until I was married. For forty years.

Q. When did you get married?

A. It was in 1860.

Q. Did you then leave Evergreen street?

A. Not exactly then.

Q. Shortly after that?

A. I went down to the neighborhood of Douglas street.

Q. Did you leave Evergreen street on your parents dying?

A. They had not died when I left.

Q. When did they die?

A. My father died about six years after my marriage.

Q. Did you cut your connection or interest in Evergreen street?

A. Well, I did not see much of it.

Q. Therefore, do I understand you to say that you lost sight of the Sullivan family after you left?

A. I lost the run of them altogether.

Q. After that did you meet Hannah Callaghan?

A. Occasionally.

1194 Q. Now, is the Hannah Callaghan we had in here last before you came in the same Hannah whom you knew as that living with the Sullivans?

A. The same Hannah Callaghan.

Q. Well, now, do you know in what capacity Hannah Callaghan lived with Peter Sullivan and his wife?

A. She was doing crochet work.

Q. Do you know if she was any relation of theirs?

A. Only one of the family.

Q. But you don't know what connection there?

A. No, sir.

A. Do you know what employment Peter Sullivan had?

A. In Beamish and Crawford's brewery.

Q. Do you remember anything physically peculiar about Peter Sullivan?

A. There was something wrong with one eye.

Q. When you lived in Evergreen street, how far away was Peter Sullivan's house from your place?

A. About four or five doors.

Q. Used you frequent each other's houses?

A. Occasionally.

Cross-examined by Mr. BLAKE:

Q. Did you know Hannah Callaghan's father and mother?

A. Oh, no.

Q. Did you know Peter Sullivan's wife, Abina McAuliffe?
A. Oh, I did.
Q. Do you know whether she had any sisters or not?
A. I could not say.
1195 Q. Did you know Margaret Riordan that was married to John Riordan?
A. No, sir.
Q. And you did not know any Riordan at all?
A. No, sir.
Q. None of the sisters of Abina McAuliffe?
A. No, sir, except the family I speak of.

Cross-examined by Mr. DONEGAN:

Q. Do I understand you to say, Mr. Burke, that in 1866 you lost the run of these people?
A. I did, sir.
Q. I suppose you mean you moved out of the district yourself?
A. Yes.
Q. Did you also lose run of Hannah Callaghan?
A. I lost run of her but I saw her occasionally.
Q. Did you not see Hannah Callaghan since 1866?
A. I did, sir, on several occasions on the street.
Q. Was that quite recently?
A. Oh, yes, the last time I saw her was about three or four months ago.
Q. But before this three or four months ago had you seen her recently since '66?
A. I saw her often in the street, but I never spoke to her.
Q. What was Hannah Callaghan in the Sullivan family?
A. She was adopted there as a niece or cousin.
Q. Do you know that yourself?
A. Oh, I don't know it, but my belief.
Q. When did you hear that she was a niece?
1196 A. Always understood she was a niece living with them, no more than that.
Q. Did you know John Sullivan very well?
A. Very well.
Q. How old are you?
A. I am something over 61.
Q. In or about the same age?
A. John Sullivan would be about my age now.
Q. Would you know him do you think if you saw his photograph?
A. Well, he was not more than 18 when I last saw him.
Q. Was that (handing witness a photograph) anything like him?
A. (Looking at photograph.) Oh, this is an old man now.
Q. You would not recognize him you say from that?
A. I would not.

Mr. HOWE: I would like to have that identified as having been shown the witness so that it would be used in evidence afterwards.

Mr. DONEGAN: I have no objection to having it identified.

(Mr. Howe asked the commissioner to mark the photograph as having been offered and exhibited for identification for Marie Carrau. The photograph was handed in and marked accordingly.)

1197 Mr. DONEGAN (to witness): You saw this Hannah Callaghan within the past few months?

A. Yes, sir.

Q. Do you know what Hannah Callaghan was doing all her life? What was she?

A. A crochet worker.

Q. And do you know whether she was doing any crochet work within the last few months?

A. I do not know the last time I saw her in the street, she was going about picking up coals and things like that. I would say it is four months ago since I saw her.

Q. She seemed very poor, did she not?

A. Yes.

Q. Do you know if you saw her more recently?

A. Not till I saw her this morning.

Cross-examined by Mr. COLLINS:

Q. You lived up in Crone's lane or Evergreen?

A. I lived at the corner of Crone's lane.

Q. Can you fix the year you left there?

A. I was married in '60.

Q. What age were you when you married?

A. About 21.

Q. Are you quite convinced that this Hannah Callaghan was living at the time you lived there in the house of Peter Sullivan and Abbey Sullivan before you were married?

A. Yes, in Crone's lane.

Q. Did you know any other body named Sullivan there?

A. There was another Sullivan family.

1198 Q. What family had they?

A. There was a mother and three sons.

Q. Who was the man?

(Mr. Howe objected as irrelevant, incompetent and immaterial.)

WITNESS: There was Mike and Jeremiah. Jeremiah was a tailor and the other sons worked in Sheehan's glass warehouse.

Mr. COLLINS (to witness): What age was John when he went away?

A. In or about 18.

Q. And he had already made two or three trips to sea?

A. Yes.

Q. Do you know that he was in any employment before he went to sea?
A. No, sir.
Q. And you were at school with him?
A. Yes.
Q. You knew that he was at sea, but you don't know whether he had any other occupation before he went to sea?
A. No, sir.

(Mr. RIDDLE:)

Q. When did you hear that John Sullivan was dead?
A. I did not hear it until this affair cropped up, till Hannah Callaghan's name cropped up.
Q. How long ago?
A. I think last Thursday week it was that this gentleman (pointing to Mr. Wright) came down to me.
Q. Did you know that John Sullivan was dead?
A. I did not.
Q. Who told you he was dead?
1199 A. I heard it now from Hannah Callaghan.
Q. Did you know that John Sullivan was in Ireland the summer before he died?
A. I did not, sir.
Q. As an old school friend of yours he did not hunt you up?
A. No, sir, he did not come near me.
Q. I believe you testified that you did not know what relationship there was between Hannah Callaghan and the Sullivan family?
A. No, sir, I did not know.
Q. How frequently have you seen her within the past 20 years?
A. Oh very often in the street.
Q. Spoke to her?
A. No, sir, I did not speak to her.
Q. What business was she engaged in?
A. She was about picking up coals.
Q. Do you know where she lives now?
A. I am told she lives at Mrs. Davidson's.
Q. Not to your knowledge?
A. No.
Q. Have you any information as to where she lived within the past twenty years?
A. No, sir.

Very Rev. CANON CAREY, having been first cautioned and sworn, was then examined and testified as follows:

Mr. HOWE: What is your name?
A. Jeremiah Carey.
Q. Where do you reside?

A. At River View, Carrigaline.

1200 Q. And what is your profession?

A. Roman Catholic parish priest.

Q. Are you Rev. Canon Carey, parish priest of Carrigaline?

A. Yes.

Q. How long have you been so?

A. I have been parish priest for over 23 years—nearly 24 years.

Q. How far is Carrigaline from Cork?

A. About seven and a half miles.

Q. And what is the population of Carrigaline village?

A. The population of the village is about 110 or 120, without being too exact.

Q. And what is the population of the parish of Carrigaline?

A. The population of Carrigaline, I may tell you, is distributed between two or three parishes under the jurisdiction of two or three parish priests or four, but the portion under my jurisdiction includes Templebreda or Crosshaven. The population under my jurisdiction comes to 2,250.

Q. Has the population been substantially the same from the time you took charge until now?

A. Oh, no, it has been diminishing.

Q. Have you in your custody the marriage register of the parish of Carrigaline for the year 1830?

A. I have.

Q. Will you produce that marriage register?

(Witness here produced the register referred to.)

1201 Q. Is that the original register?

A. It is.

Q. Did it come into your custody from your predecessors?

A. It did.

Q. And is it now in your custody as the parish priest of the parish?

A. It is.

Q. I will ask you now to refer to the date of the 26th day of November, 1830, and state whether you find any entry in that register relating to William Callaghan and Bridget McAuliffe?

A. Yes. I find on the 26th day of November, 1830, William Callaghan and Bridget McAuliffe married.

Q. By whom?

A. By the Rev. Jer-miah John Ryan, parish priest.

Q. I now show you a document marked Plaintiffs' Exhibit "F" and ask you whether you wrote that document and whether that is a true and a correct copy of the writing which appeared in the parish register which you have just referred to?

A. I wrote that and it is a correct extract from the register which I now prove to be in my custody and which I now have. It is not exactly in the same words, but it is correct and it is in the form of certificate. I always give in such cases.

Q. It contains what the register says?

A. Yes.

Q. I will now ask you to read it so that the stenographer can take it.

(WITNESS reading:) "William Callaghan and Bridget McAuliffe, John Murphy and Nora Daly witnesses, 26th Nov., 1830."

Q. And that book is the marriage register?

1202 (The certificate was handed in and marked.)

The certificate was handed in and marked.

Q. I now ask you to refer to the same book on date of *on date* 8th Feb. 1837, in referenre to the entry of the marriage of John Corcoran and Margaret McAuliffe. What entry did you find there?

A. John Corcoran and Margaret McAuliffe upon the 8th Feb. 1837, witnesses John Marshall and Mary White.

Q. That is the marriage register you now hold in your hands?

A. Yes.

Q. I now hand you a document marked Plaintiffs' Exhibit "G" and ask you if you wrote the document and ask you if it is a true and correct extract from the marriage register?

A. It is. (Document "G" was then entered and marked.)

Q. I will now ask you to refer to the baptismal register of date 23d May, 1837, in regard to the entry of the baptism of a Ned Corcoran and if you will read the entry?

A. (Reading:) "Ned of John Corcoran and Margt. McAuliffe, James Kennedy and Mary Scanneil sponsors, 23rd May, 1837."

Q. That is the baptismal register of the parish?

A. Yes.

Q. And is the original book which has *been* always been in your possession, the official book?

A. Yes.

Q. I now hand you a document marked Plaintiffs' Exhibit
1203 "I" and ask you if it is a true and correct abstract of the baptismal register, and whether you made the document?

A. (Looking at the document.) I made the extract; it is true and correct. The certificate was then marked "I."

Q. I ask you now to refer to the baptismal register for the year 1837, 26th day of March, 1837, for the father and mother of Johanna, of Wm. Callaghan and Bridget McAuliffe.

A. (Reading:) "On the 26th March, 1837, Johanna of Wm. Callaghan and Biddy McAuliffe, sponsors, Maurice Mahony and Johanna Barry."

Q. I now hand you a document marked Plaintiff's Exhibit "H" and ask you whether you made the document, and whether it is a true and correct abstract of baptismal register which you hold in your hand?

A. Yes, I did, it is true and correct.

(The certificate of this date was produced and marked.)

Q. Ever since you became parish priest these registers have been in your possession, have they?
A. Yes.
Q. These are the official records of the parish, are they?
A. Yes.

Cross-examined by Mr. BLAKE:

Q. Tell me, Canon, I think you put down there that John Corcoran was married to Margaret McAuliffe on the 8th of February, 1837, is that correct?
A. Yes.
1204 Q. Is that 1837 (handing witness document)?
A. Yes, the correct date.
Q. There is no doubt about that?
A. None.
Q. Now, coming to the Ned Corcoran, can you tell us what date he was born?
A. By anticipation I may tell you it was not 12 months after the marriage, I remember that quite well.

(Mr. JULIAN:)

Q. If it was only a day after it is quite sufficient.
WITNESS: He was born on the 23rd May, 1837.
Mr. BLAKE: They were only married about three months when he was born?
A. I suppose so.
Q. I believe portion of your registry is not forthcoming at all?
A. I think so, portion of the registry of the parish was kept before my time.
Q. Up to what time would you say?
A. Up to the year 1809, I could not say that it is correctly kept but I believe it was correctly kept after that time.
Q. Up till that time it was not correctly kept?
A. I believe there were some omissions.

Cross-examined by Mr. DONEGAN:

Q. Was it Rev. Father Ryan was parish priest before you?
A. No, there were two parish priests between him and me.
1205 Q. You do not know in whose writing any of those entries are?
A. Of course I don't know except from general information, I never saw him (Father Ryan) write, but I believe it is his writing. I can judge of that from the uniformity of the writing in his hand all along.
Q. You never saw him write?
A. I never saw him write, but of course I am satisfied it is his writing. There was no other person there to write. He was the

sole priest of the parish for a number of years and this book has been transmitted from one parish priest to another until it came into my hands.

Mr. JULIAN: This is nearly 100 years ago.

WITNESS: The old book dates back to 1803.

Cross-examined by Mr. COLLINS:

Q. Are there many people named McAuliffe there?

A. There were a good many at one time, but there are not at present.

Q. It was a common name?

A. Well, there was a good number in a certain portion of a parish, I heard people speaking of them. I think they lived near Carrigaline.

Q. That would be about 7½ miles from Cork?

A. Yes.

Mr. RIDDLE: I have nothing to ask him.

1206 CHRISTOPHER JOHN HILLIARD, having been first cautioned and sworn, was then examined and testified as follows:

Mr. HOWE: Mr. Hillard, what is your name?

A. Christopher John.

Q. Where do you reside?

A. Passage West.

Q. Where is that?

A. Just at the other side of the river, seven miles from Cork.

Q. You do business in Cork?

A. Yes.

Q. What is your business?

A. Accountant.

Q. Where?

A. Beamish & Crawford's brewery.

Q. How long have you been accountant there?

A. I think probably thirty-three years.

Q. Did you ever know one Peter Sullivan who resided in Evergreen street?

A. I don't know where he resided but I know Peter Sullivan who worked in the brewery.

Q. Was he employed in the brewery?

A. Yes.

Q. Did you know him personally?

A. Yes.

Q. Was there any peculiarity about him in regard to his face?

A. He had one defective eye.

Q. Do you know the nickname by which he was called?

A. Yes. Lord Nelson.

Q. Have you the wage book of the brewery?
A. Yes.
Q. Will you please produce it?
A. Yes.
Q. You have it in your hand?
A. Yes.
1207 Q. Is it a book of original entry?
A. Yes.

Q. Will you refer to the portion of the book which shows the payment to Peter Sullivan of a pension of nine shillings weekly. What date did the pension begin and what date did it end?

A. Some member of his family got it for the week ending 23d August, 1873.

Q. Are you aware that that was after his death?
A. Yes.
Q. I believe you wrote that entry?
A. Yes.

(Mr. DONEGAN:)

Q. Is it in the handwriting of witness?
A. (WITNESS.:) Yes.

(Mr. HOWE:)

Q. Read that entry.

A. (Reading:) "Peter Sullivan paid nine shillings Sat'y, 23rd August, '73." These pensions are always paid on Friday, the week ending Saturday.

Q. Will you refer to the date when the pension began?
A. He was paid for the first time the week ending 18th Dec. '69.
Q. And what was the amount of the pension?
A. Nine shillings weekly.

Q. Is that entry at the date at which the pension began in your handwriting?

A. Yes.
Q. What is the entry in the next column?
A. "Dead." Headed 30th August, 1873.
Q. And the pension was paid weekly?
1208 A. Yes.

Q. When was he an active employee for Beamish & Crawford?

A. Well, he had been ill I know for some time, for some weeks, he was paid for one week ending 12th Nov. '69.

Q. Was Peter Sullivan an employee of that institution before you went there or did he go there after you?
A. I believe he was there long before me.
Q. And he remained there during all the time you were accountant up to his death?
A. Yes.
Q. Now, will you allow me to take that book over to America?

A. Well, I should consult the directors.

(Witness, at the request of Mr. Howe, said he would make an extract from the book at the time Sullivan was an active employee of the firm and the beginning and ending of the pension.)

(Mr. BLAKE:)

Q. Did you know any of his family, Mr. Hilliard?
A. No.

(Mr. DONEGAN:)

Q. Let me have a look at that book. (Examining book.) You say this book is entirely kept by you?
A. No, that part is not kept by me that you are looking at now.
Q. What part is kept by you?
A. The pension part.
Q. Well, then, you never paid any of these sums that were paid in the other part?
1209 A. This was made out by another man and I paid the money.
Q. Did you know anything about Peter Sullivan's relations or people at all?
A. No.

(Mr. COLLINS:)

Q. Did any of the members of Sullivan's family go to the brewery to get out his pension?
A. I think it very likely that it was one of the members of his family for this reason that I don't remember his coming into the pay office.
Q. You have no recollection who it was who came into the office?
A. No, it is a very long time ago.

(Mr. DONEGAN:)

Q. Had he any form of employment in the brewery after being pensioned off?
A. I think not.
Q. And he had no duties there at all?
A. When the pension commences their work ends.
Mr. RIDDLE: About this time, how many employees had you in the brewery?
A. I could hardly tell.
Q. Approximately?
A. Probably a couple of hundred.
Q. You knew all of them personally?
A. No.
Q. Did you know Peter Sullivan personally?
A. Yes.
Q. You remember his person?

A. Yes, probably, because of his having been called "Lord Nelson," otherwise I might not have known him.

Q. What was his age, apparently, at the time you knew him?

1210 A. I remember he was an old man, probably between 60 and 70 years of age.

Q. Was he too old to work further?

A. It was through old age he got the pension.

Q. Did you ever have any conversation with him outside his duty?

A. No.

Q. You knew nothing whatever about his family, or where he lived?

A. No.

(Mr. HOWE:)

Q. Do you know a man named Denis Murphy?

A. Yes, sir.

(Mr. DONEGAN:)

Q. Did this arise out of the cross-examination?

Mr. HOWE: No.

(Mr. DONEGAN:)

A. Well, I object to it.

Mr. HOWE (to witness): How long has he been employed in Beamish & Crawford's brewery?

A. As long as I can remember he was there, before I came there.

(Mr. COLLINS:)

Q. Is he living still?

A. He is.

DENIS MURPHY, after having been cautioned and sworn, was examined and testified as follows:

Mr. HOWE: What is your name in full?

A. Denis Murphy.

Q. Where do you live?

A. No. 26 North Main street.

1211 Q. How long have you lived there?

A. For the past fortnight.

Q. Where do you work?

A. In Beamish & Crawford's brewery.

Q. How long have you worked there?

A. Fifty-three years and a month.

Q. Did you ever know Peter Sullivan?

A. Remarkably well.

Q. Where did he live?
A. In Crone's lane.
Q. Where afterwards?
A. I got disacquainted with him after that.
Q. Did you know the rest of his family?
A. His son, two daughters, and wife.
Q. What was his son's name?
A. John.
Q. And the daughters' names?
A. Ellen and Lizzie.
Q. Do you know what became of John? Where did he go to?
A. He went to America as a sailor, and settled down in America.
Q. Did you ever write any letters for Peter Sullivan to his son John?
A. I wrote some, and addressed some.
Q. Did you ever know Hannah Callaghan?
A. I did, sir, for years.
Q. Did you know what relation Hannah Callaghan was to the wife of Peter Sullivan, whom you knew?
A. A niece of the wife.
1212 Q. Did you ever hear Peter Sullivan say that she was his niece?
A. I did, sir, frequently.
Q. Now, what became of Bessie Sullivan?
A. Bessie Sullivan died in an asylum.
Q. Was Ellen Sullivan ever married?
A. She married a Portuguese captain.
Q. What became of him?
A. He died.
Q. Did you ever know any brothers of Peter Sullivan?
A. No, sir.
Q. Or sisters?
A. No, sir.
Q. Now, where did Peter Sullivan work?
A. He worked in several departments; I know he worked in the cooperage and in the cask department.
Q. In what institution?
A. Beamish & Crawford's.
Q. Was there any peculiarity about his face?
A. Yes, he had lost an eye. It was misshapen or lost.
Q. What was his nickname, if any?
A. Lord Nelson, they called him, as long as I remember.
Q. Now, do you know whether Peter Sullivan was a pensioner of Beamish & Crawford's?
A. He was, sir.
Q. Do you know how much pension he got?
A. Nine shillings a week.
Q. Did he get that pension up to the time of his death?
A. He did sir.

1213 Cross-examined by Mr. BLAKE:

Q. Tell me, did you know sister of Peter's wife?
A. No, sir.
Q. You did not know Abina Sullivan?
A. I knew Abina Sullivan's daughters, Ellen and Lizzie Sullivan.
Q. Did you know Mary McAuliffe, who was married to Humphrey Sullivan?
A. No, sir.
Q. Did you know any of the Riordans?
A. No.

(Mr. DONEGAN:)

Q. Did you know this man Peter for a number of years?
A. Yes, for about fifty years.
Q. Did you know his household, the wife and family?
A. Yes, for a number of years.
Q. You say that Peter at one time said to you that Hannah Callaghan was his niece?
A. Yes.
Q. Do you know how she is related?
A. She was known as niece, his wife's niece.
Q. Do you know anything about the relationship?
A. No more than that.
Q. Did you know these people very intimately?
A. Very intimately.
Q. Did you know them before John went to America?
A. I did, sir.
Q. And were you living anywhere near them?
A. Yes; I was living convenient.
Q. When you say convenient, how near?
A. Well, I was fifty perches or so away.
1214 Q. What street were you living in, then?
A. I was living in Stephen's street.

(Mr. COLLINS:)

Q. Did you say that you did not know Peter after he left Crone's lane?
A. No, I did not know him after that.
Q. Did you know of him afterwards?
A. Oh, I used to hear of him.
Q. You did not know where he was after he left Crone's lane?
A. No, sir.
Q. Well, it was before he left Crone's lane that you wrote the letter to America?
A. Yes.

Cross-examined by Mr. RIDDLE:

Q. Did you know John?
A. Yes, sir.
Q. How old was he when you knew him?
A. Well, he might be about fourteen years of age, when I first know him.
Q. Did you know him when he went away?
A. Yes, indeed.
Q. How old was he at that time?
A. Well, I suppose about sixteen or seventeen.
Q. Was this the first time he went away?
A. Yes, sir; the first time.
Q. Did you see him afterwards?
A. I saw him twice only afterwards.
Q. You knew him only in Crone's lane?
A. That is all.
Q. Do you remember how long it was that you knew
1215 him after he left Crone's lane before he was pensioned off by the brewery?
A. I think he was living in Crone's lane when he was pensioned off.
Q. He was not living in Evergreen then?
A. I think not.
Q. Where was he living at the time of his death?
A. I could not tell.
Q. How do you know he was pensioned?
A. I wrote the letter for him to get the pension.
Q. What is your age?
A. About sixty-seven.
Q. How old were you when you knew John at fourteen?
A. I was a few years older than him; six years, at least.
Q. Were you at school with him?
A. No.
Q. Did you know him well?
A. Perfectly well.
Q. Were you playmates?
A. No.
Q. Did you know of him being here in the summer of 1900?
A. I only heard of it.
Q. When did you hear of his being dead first?
A. I was told about five or six months ago by this man Riordan who is here to-day.
Q. What was the occasion of Peter telling you that Hannah Callaghan was his wife's niece?
A. Well, I often heard him speaking about her. I heard him telling my father and mother about it. I was present when
1216 they were speaking of it; they were very intimate in our house, and in that way I learned a good deal.

Q. Did you know Hannah Callaghan yourself?
A. Yes, well.
Q. How old was Hannah Callaghan when you knew her in Crone's lane?
A. I could not say.
Q. Was she older or younger than John?
A. Older than John.

(Mr. BLAKE:)

Q. You say you wrote to John Sullivan in America?
A. Yes.
Q. Do you know what address you wrote to?
A. Yes, to Seattle; I wrote his letters first to him.
Q. Can you recollect the particular address?
A. No, sir; I cannot.

(Mr. COLLINS:)

Q. Or the date?
A. No, I do not take much interest in it. It went out of my head.

(Mr. RIDDLE:)

Q. Do you remember what year it was?
A. Well, I suppose, it is over thirty years ago if not more.

(Mr. HOWE:)

Q. Do I understand you to say that you knew what the maiden name of Peter Sullivan's wife was?
A. Yes, sir.
Q. What was it?
A. Abbey McAuliffe.

(Mr. RIDDLE:)

Q. Do you know how Peter found out the address of John or how did you find it out?
A. He wrote it himself to his father. I saw the letter.
1217 Q. You saw the letter?
A. Yes.
Q. Did you write more than once?
A. Once or twice.
Q. Was Peter able to write himself?
A. No, sir, I think not.
Q. Were Bessie or Ellen able to write?
A. I think the daughters were able to write.
Q. You don't know how long that was after John left you, say it was about 30 years ago you wrote the letter?
A. I didn't know, I could not tell.

Mr. T. BABINGTON, solicitor: I appear for Michael Sullivan, who is a paternal cousin of the deceased; I claim on the paternal side.

ELIZA COWHIG, having been cautioned and sworn, was examined and testified as follows:

Mr. JULIAN: What is your name?
A. Eliza Cowhig.
Q. Where do you live?
A. Evergreen road.
Q. 114, I believe?
A. Yes.
Q. Are you a widow?
A. I am, sir.
Q. About what is your age?
A. Sixty-four.
Q. Did you know the late Peter Sullivan?
A. I did, sir.
Q. Did you know his wife?
A. Indeed, I did.
Q. Do you recollect what the Christian name of his wife was?
A. Abina or Abigail McAuliffe.
1218 Q. Do you remember how many children they had?
A. Yes, there was Bessie, Ellen, and John.
Q. Do you recollect was either of the girls married?
A. One of them.
Q. Which of them?
A. Ellen.
Q. To whom was Ellen married?
A. To Emanuel Silva.
Q. Do you know what occupation he was——
A. He was a sailor.
Q. Is Ellen Silva alive or dead?
A. Dead years ago.
Q. Did she leave any children after her?
A. No, she never had a child.
Q. Do you know what happened to Bessie or Elizabeth Sullivan?
A. She died in Bull's lunatic asylum.
Q. Was she ever married?
A. No.
Q. Do you recollect the other child, John Sullivan?
A. I do, very well.
Q. Do you recollect when he was growing up a boy and running about?
A. I do, well.
Q. Do you recollect his being at all employed in Cork?
A. I do.
Q. Where was he employed?
A. In Breton's, the jewelers, in Patrick street.
Q. Was that for long?
A. Not for very long.
Q. Do you recollect his going away from Cork after that?
A. I do.

Q. What did he do?

1219 A. He went in a ship from Passage for Quebec or St. Johns.

Q. In North America?

A. Yes.

Q. Did you ever see him after that?

A. I have no recollection of seeing him after that.

Q. Besides those three children had Peter and Abina Sullivan anyone living with them?

A. Hannah Callaghan, the niece of Mrs. Sullivan.

Q. Did you know Hannah Callaghan's mother?

A. No. I never saw her.

Q. How did you know she was the niece of Mrs. Sullivan?

A. They gave me to understand she was the niece on the very day she brought her to the house.

Q. Who brought her?

A. Mrs. Sullivan.

Q. She then explained to you that she brought her as her niece?

A. Yes.

Q. Did she explain why she brought her?

A. Yes, that she was an orphan.

Q. Did she say her mother had recently died?

A. I have no recollection.

Q. Do you recollect Hannah Callaghan remaining there that time with the Sullivans?

A. Yes, up to the time of the old man's death.

Q. Then the household was broken up?

A. Yes.

Q. Did you ever know the old people to get letters from America?

1220 A. Yes, Ellen Sullivan always told me whenever they had a letter from America.

Q. You are well aware that John used to write to them?

A. I am well aware of that.

Q. Are you aware from what portion of the globe they came?

A. The last letter was from Vancouver's island she told me.

Q. Had it the postmark?

A. Yes.

Q. Do you say that that was the last letter from him?

A. I could not say whether it was the last letter from him, but it was the last letter she told me they had from America.

Q. She is a long time dead?

A. Yes, she is dead a long time.

Q. Did either of those Sullivan girls stand as god-mother to a child of yours?

A. Yes, Ellen Silva did.

Q. You know Hannah Callaghan that we had examined here to-day.

A. Yes, I know her very well.

Q. Is that the same Hannah Callaghan you remember Mrs. Abina Sullivan bringing in to adopt?
A. Oh, the very same.

Cross-examined by Mr. BLAKE:

Q. Did you know Humphrey Sullivan who was married to Mary McAuliffe?
A. No, sir; I did not know him.
1221 Q. Or any of his children?
A. No, sir; I did not know them.

Cross-examined by Mr. DONEGAN:

Q. Did you know Bessie Sullivan very well?
A. Yes.
Q. And Ellen?
A. Yes, and Ellen too.
Q. You stated in your direct examination that you remember the day that Mrs. Sullivan brought this Hannah Callaghan to the house?
A. Yes.
Q. How old was Hannah at that time?
A. Oh, about 12.
Q. How old are you?
A. I was about 14 at the time.
Q. Did Hannah Callaghan continue to live in the house with those people?
A. Yes.
Q. Up to what time?
A. Up to the old man's death and he was the last.
Q. Did you know them intimately?
A. I did; indeed.
Q. And Hannah Callaghan intimately?
A. Yes.
Q. And she lived at the house all those years?
A. All those years.
Q. She never lived anywhere else all that time?
A. She always lived with them up to the old man's death.
Q. When was that?
A. I could not tell he was the last.
1222 Q. Give me an idea of it, of the time?
A. I suppose 27 or 28 years ago.
Q. What did Hannah Callaghan do then?
A. She always was in the habit of doing crochet. She went down and lived with a family named Brien in Evergreen street after the old man's death.
Q. What did she do then?
A. She earned her living by doing crochet.

Q. What did he do?

1219 A. He went in a ship from Passage for Quebec or St. Johns.

Q. In North America?

A. Yes.

Q. Did you ever see him after that?

A. I have no recollection of seeing him after that.

Q. Besides those three children had Peter and Abina Sullivan anyone living with them?

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Q. Did you know Hannah Callaghan's mother?

A. No. I never saw her.

Q. How did you know she was the niece of Mrs. Sullivan?

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Q. Who brought her?

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Q. Did she explain why she brought her?

A. Yes, that she was an orphan.

Q. Did she say her mother had recently died?

A. I have no recollection.

Q. Do you recollect Hannah Callaghan remaining there that time with the Sullivans?

A. Yes, up to the time of the old man's death.

Q Then the household was broken up?

A. Yes.

Q. Did you ever know the old people to get letters from America?

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Q. You are well aware that John used to write to them?

A. I am well aware of that.

Q. Are you aware from what portion of the globe they came?

A. The last letter was from Vancouver's island she told me.

Q. Had it the postmark?

A. Yes.

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A. Yes, she is dead a long time.

Q. Did either of those Sullivan girls stand as god-mother to a child of yours?

A. Yes, Ellen Silva did.

Q. You know Hannah Callaghan that we had examined here to-day.

A. Yes, I know her very well.

Q. Is that the same Hannah Callaghan you remember Mrs. Abina Sullivan bringing in to adopt?
A. Oh, the very same.

Cross-examined by Mr. BLAKE:

Q. Did you know Humphrey Sullivan who was married to Mary McAuliffe?
A. No, sir; I did not know him.
1221 Q. Or any of his children?
A. No, sir; I did not know them.

Cross-examined by Mr. DONEGAN:

Q. Did you know Bessie Sullivan very well?
A. Yes.
Q. And Ellen?
A. Yes, and Ellen too.
Q. You stated in your direct examination that you remember the day that Mrs. Sullivan brought this Hannah Callaghan to the house?
A. Yes.
Q. How old was Hannah at that time?
A. Oh, about 12.
Q. How old are you?
A. I was about 14 at the time.
Q. Did Hannah Callaghan continue to live in the house with those people?
A. Yes.
Q. Up to what time?
A. Up to the old man's death and he was the last.
Q. Did you know them intimately?
A. I did; indeed.
Q. And Hannah Callaghan intimately?
A. Yes.
Q. And she lived at the house all those years?
A. All those years.
Q. She never lived anywhere else all that time?
A. She always lived with them up to the old man's death.
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A. She always was in the habit of doing crochet. She went down and lived with a family named Brien in Evergreen street after the old man's death.
Q. What did she do then?
A. She earned her living by doing crochet.

Q. Was she living with them since then?

A. Oh, not since, I don't know where she went to live on leaving Evergreen street.

Q. Did you see her constantly since the death of the uncle the old man?

A. Not very frequently.

Q. Do you know where she was living since the uncle's death.

A. She had lived with the Brien's in Evergreen street, and I could not tell where she lived after leaving them.

Q. You know of your own knowledge she went to Brien's first?

A. Yes, she did.

Q. You say you heard from Ellen Silva that they heard from John?

A. Oh, yes, she always told me when she got a money letter.

Q. How many times did she tell you that?

A. About five times or six times.

Q. Altogether?

A. Yes.

Q. Would that be extended over a number of years?

A. Well, not so very many years.

1223 Q. You could not tell me when they first heard from John?

A. I could not.

Q. Do you remember John yourself?

A. I do indeed, very well.

Q. Do you remember when he went away?

A. I do.

Q. How old was he?

A. Eighteen or nineteen when he went away as well as I could guess.

Q. When did you first hear John was dead?

A. I heard it last September twelve months.

Q. What date in September?

A. I could not tell the date, but it was some time in September.

Q. How did you hear it?

A. How I first heard it, there was an old neighbor in Evergreen street and he told me that Hannah Callaghan was coming in for a lot of money. She was described to me, then said it was left by her brother. I knew Hannah Callaghan had no brother alive and I understood at once that the money was left by John Sullivan, who was the only relative she had abroad.

Q. What brothers had Hannah Callaghan?

A. I could not tell; did she ever have a brother?

Q. Were you given money by any person to give testimony in this case?

A. No, sir.

Q. Or for any other purpose?

A. No.

Q. Do you know the witness- that have been examined here?
A. I do.
1224 Q. Do you know whether any of the witnesses have received money for giving evidence here?
A. I could not account for that; I don't know.
Q. Have you received any yourself?
A. No.
Q. From any person?
A. No.
Q. Do you swear that?
A. I do.
Q. Do you know whether Hannah Callaghan has received any money?
A. I could not tell that.
Q. What was Hannah Callaghan all those years; what was she doing for a livelihood?
A. I think she was charing.
Q. Would it be true to state that she was going about the streets picking up coal and rubbish and things like that? Would it be a correct description?
A. It would not be out of the way.
Q. Do you repeat that you don't know whether she got any money?
A. I will not answer that question.
Q. Do you know?
A. No.

Cross-examined by Mr. COLLINS:

Q. Did you know Peter Sullivan's wife intimately?
A. I did, indeed.
Q. What used she do for a living?
A. Is it Peter Sullivan's wife; I never heard of her doing anything except her own housekeeping.
Q. She was never a "chorewoman"?
A. Never.
Q. Did you know her intimately?
A. Yes.
Q. You know she died some years ago?
A. Yes, she is dead for some years.
1225 Q. Do you know she had money?
A. I knew she had money.
Q. Where did she keep it?
A. She had all the money when they died; I knew John sent them some.
Q. Did you know Hannah Callaghan at this time?
A. I did.
Q. Did you go to her and say Bessie's money is there in the bank?
A. I did not; Hannah Callaghan herself knew it was there.

Q. You never acquainted Hannah Callaghan that it was so, did you?

A. She heard of it herself before I did.

Q. You never acquainted her of money that was there that she might get?

A. No.

Q. You say John went away to sea; had he ever been to sea before he went that voyage?

A. No.

Q. And you never recollect him coming back?

A. No, I have no recollection.

Q. You never saw him come back anyway?

A. No.

Q. Why did Mrs. Silva sign her name to the baptismal certificate? Do you know Ellen Sullivan; was she godmother to your child?

A. Yes.

Q. And yet she signs her name as Ellen Sullivan?

A. Yes.

1226 Cross-examined by Mr. RIDDLE:

Q. Were you living in Crone's lane when you knew John Sullivan?

A. I was in the same house with him.

Q. Did you know any other Sullivans in Crone's lane?

A. No.

Q. Do you know were there any other Sullivans in the lane?

A. There might have been, but I don't recollect.

Q. Are there many people living there, that were living there then?

A. Mrs. Davidson is there.

Q. Did she know the Sullivan family?

A. Yes.

Q. Did she know John?

A. Yes.

Q. How far from the Sullivans did she live?

A. She lived at the top of Crone's lane; it is near Friars walk; they lived at the second house from the Evergreen side, one at the top, and the other at the bottom.

Q. Did you know if John Sullivan saw her in the summer of 1900?

A. I don't think he made himself known to anybody here.

Q. Did you know he was up at Crone's lane looking for friends of his?

A. I did not hear that.

Q. If he went up there he would have found Mrs. Davidson living there?

A. Indeed, he would. She is herself living there.

Q. How old is Hannah Callaghan?

A. I suppose 62 or 63.

1227 Q. So that there is only one or two years' difference between your age and hers?

A. Yes.

Q. How well have you known her? In the past 20 years have you seen her every day?

A. Not every day; indeed.

Q. Every week?

A. Not every week either.

Q. Every month?

A. I might have seen her every month.

Q. Every month for the past 20 years; where did you see her?

A. I would often meet her in the day in the street.

Q. What was she doing?

A. I could not tell what she was doing.

Q Was she employed in any capacity?

A. She was not employed in any capacity when I saw her; she seemed to be going up to Bandon road, to be going home.

Q. Do you know where she lives now?

A. No; I do not.

Q. Have you ever been to the house where she lives?

A. No, sir.

Q. Have you ever been to the house where she lived for the past 20 years?

A. No.

Cross-examined by Mr. BLAKE:

Q. Was Elizabeth Bass your name?

A. Yes.

Q. You were married to Timothy Cowhig?

A. Yes.

Q. Hadn't you a son Timothy Cowhig born 16th January, 1850?

A. Yes.

1228 Q. At the time was Ellen Silva—did she act as godmother to the child?

A. Yes.

Q. She signed her name to this certificate as Ellen Sullivan—do you know the married people give their maiden names?

A. It is generally done.

Q. There could be no doubt that Ellen Sullivan was Ellen Silva?

A. The very same person.

Q. You also said you knew the girls got money from America?

A. Yes. Ellen Silva gave me to understand.

Q. Whom did she say she got it from?

A. She would say to me, we had a letter from John this morning sending us a little money.

Q. Did you ever read a letter from him?

A. No.

(Mr. Babington was about to examine witness when Mr. Howe, interposing, said that the court could not recognize anyone who was not appearing in the American record, and therefore Mr. Babington could not be heard.)

Mr. BABINGTON: I appear here for Michael Sullivan; this is an hearing for the purpose of finding the truth, and a person is entitled to come in here and give evidence here and show you a true statement of the facts, and I am informed that this sitting is for the purpose of inquiring who is the next of kin.

The CONSUL: That is not really the purpose of the inquiry.

1229 The purpose of the inquiry is with regard to a suit pending at present there, where there is plaintiff and defendant, and the parties who have stipulated are the only parties who are allowed to take part in this.

Mr. BABINGTON: I thought it was an inquiry for the purpose of finding out who was the next of kin to the deceased, and I say it would be only waste of time not to have all the evidence before you.

The CONSUL: I am sorry I cannot hear you, but it would be out of order.

ELLEN DAVIDSON, having been cautioned and sworn, was then examined and testified as follows:

Q. Your name is Ellen Davidson?
A. It is my married name.
Q. Your maiden name is Riordan?
A. Yes.
Q. You live at Crone's lane?
A. I do, indeed, sir.
Q. How long have you been living there?
A. Sixty-four years, I suppose.
Q. Did you know Peter Sullivan?
A. I did well, sir.
Q. And his wife?
A. I did well, sir.
Q. What was his wife's name?
A. Abina.
Q. Did you know what her name was before her marriage?
A. No, I did not know anything about her until they came to live in the lane.
Q. You were living in the lane when they came to live there?
A. Yes.

1230 Q. Did you know where Peter was employed?
A. At Beamish and Crawford's brewery.

Q. Do you know when he ceased to work or whether he was pensioned there?
A. Indeed I do.
Q. How many had they in the family?

A. Only three, sir.
Q. Do you recollect what their names were?
A. I do; Bessie, Ellen and John.
Q. Do you recollect any person living in the family besides the children?
A. Yes. Hannah Callaghan.
Q. Was she young?
A. She was about six or seven years old, I think.
Q. In what capacity do you know did Hannah Callaghan come? Did Abina Sullivan tell you?
A. She brought her out of the Union after the father and mother dying.
Q. Why should Mrs. Sullivan feel bound to take care of her?
A. Because she was her niece.
Q. Was she the child of her brother or sister?
A. She was the child of Mrs. Sullivan's sister.
Q. Was she treated, as long as you remember, as a member of the family?
A. All the same.
Q. Just the same as Bessie and Ellen were treated?
A. The very same.
Q. Do you recollect whether either of the girls got married?
A. Ellen got married.
Q. To whom?
A. To a foreigner.
Q. Do you recollect his name?
1231 A. Yes, Silva.
Q. Do you recollect what occupation he was at?
A. He was a sailor.
Q. Do you recollect Ellen Silva dying?
A. I do.
Q. Had she any family?
A. Not one. I believe she had a little child but it died.
Q. She left no one surviving her?
A. No. She died soon after.
Q. Do you recollect Bessie?
A. I do as well as I see you now.
Q. Do you recollect Bessie going into service?
A. I do as a little girl.
Q. Do you recollect the name of the lady she went to service to?
A. Yes. Mrs. Lyons.
Q. Do you recollect Bessie's death?
A. I did not hear of her death until afterwards. If I knew of it I would go to her funeral.
Q. Do you know whether she got out of her mind?
A. I do, sir.
Q. Did you know John Sullivan very well?
A. Indeed I did and I ought to know him.
Q. Do you know where he was born?

A. In the very same house. There are eleven houses in the lane and his was seven houses away. The numbers of the houses were changed.

Q. You were about seven houses apart?

A. Yes, I was.

1232 Q. You knew him very well playing about?

A. We were always together as children. I was older than him. His mother used to come out to beat me for the way I used to treat him.

Q. Do you recollect John when he grew up went into employment?

A. Yes, I do.

Q. Did he get into employment in Cork?

A. Yes. He was only in it a short time when this young man Silva took him off to sea.

Q. Do you know where he got employment in Cork?

A. I don't know whether it was Tobins' or the next door to it in Princes street—a confectionary shop.

Q. Is it Mrs. Russell's Princes street?

A. Yes. That is the name.

Mr. DONEGAN: I object to the mention of the name. A question is put by Mr. Julian and the name mentioned.

(Examination continued:)

Q. It was a confectionary shop in Princes street?

A. It was, sir.

Q. You say he was not very long there?

A. No. He was not.

Q. Then you say this young man Silva took him off. Do you recollect his coming back to Cork after that any time?

A. Only once to my recollection.

Q. Did he go away again?

A. He went out foreign.

Q. Have you any idea where he went to?

A. Indeed, I have not; only he went off foreign; I have

1233 no more to say about it. I heard the father and sisters say he was in America.

Q. Did you hear anything more from them beyond that they knew that he was in America?

A. Ellen got letters and money from him.

Q. They told you that?

A. Yes, he was a good son and used to send plenty of money to them.

Q. Now, do you recollect when they removed from Crone's lane with Peter Sullivan?

A. I do, sir.

Q. Where did they go?

A. Down a little further in the street right over Nicholas street.

Q. Did you keep up your intimacy with him when they left?
A. I used to go into them generally.
Q. You were a visiting acquaintance?
A. Yes.
Q. Do you recollect when old Mrs. Sullivan died?
A. I do.
Q. Did she die before or after the husband?
A. Before the husband.
Q. Do you recollect when you last heard of their getting a letter from John?
A. A few days before the father died.
Q. Shortly before the father died you heard they got a letter?
A. Yes, and money.
Q. At that time was Hannah Callaghan living with the old man?
A. She was.
1234 Q. Was the Evergreen house broken up after old Peter's death?
A. It was about a month after when the little girl gave it up that was in service.
Q. Now, Hannah Callaghan, that was examined here to-day is the same person that was reared and adopted by Mrs. Abina Sullivan?
A. The very same Hannah Callaghan.

Cross-examined by Mr. BLAKE:

Q. Does Hannah Callaghan live with you?
A. Off and on.
Q. When did she sleep last with you?
A. She slept last night with me but she has a little house of her own.
Q. Do you support her?
A. Every time she came I gave her something.
Q. Did you do that freely?
A. Freely and from my own heart. I gave her enough whenever she came.
Q. What are you to Denis Riordan?
A. I am his aunt.
Q. Did you know the wife of Peter Sullivan?
A. I did.
Q. Did you know her sisters?
A. I did, indeed.
Q. Did you know Humphry?
A. No, sir.

1235 Cross-examined by Mr. DONEGAN:

Q. You knew the sisters of John very well?
A. I did, sir.
Q. You knew Ellen?

A. I did, sir.

Q. I think I understood you to say that you were asked had Ellen any children. You thought she had a little child which died?

A. Yes, I think she had.

Q. She died herself soon after?

A. It was a good bit after.

Q. Would it be from the effects of the child's death?

A. No, it was not.

Q. How long after?

A. I could not tell.

Q. Had the fact of the child dying any connection with her death?

A. No, sir.

Q. How long after did she die?

A. A good deal after.

Q. How many years was it or was it a year at all?

A. Oh, it was.

Q. Over a year?

A. Yes, it was.

Q. You did not say to Mr. Julian she died soon after?

A. A good while after I say she died.

Q. Was the child ever alive?

A. I could not tell you, sir. I do not think it was.

Q. Was it ever ch-istened or baptized?

A. I do not think it was.

Q. You say there were eleven houses in the lane.

A. That was all.

Q. You were living at the top of Crone's lane over sixty-four years?

A. Yes.

1236 Q. Were you born there?

A. I was.

Q. Did you know the lane well all your life and the people who lived in it?

A. I did.

Q. Were there any other Sullivans living in the lane besides Peter Sullivan and the wife?

A. There was a widow woman there with five sons and one daughter.

Q. Were there any other Sullivans?

A. No. There was a Sullivan came a long time after that family.

Q. Were there four families of Sullivans living in Crone's lane at one time?

A. Never.

Q. And you have an intimate knowledge of the lane?

A. I have, sir. There were only four families.

Q. When John went away to sea do you remember the lane well at that time?

A. I do sir. As well as I do today.

Q. Will you tell me the names of any people who lived in the ten houses in Crone's lane besides the Sullivans?
A. There was a Callaghan living there long ago before you were born.
Q. What was his name?
A. He was a blind boy. I could not tell his name. He was living there with his poor mother.
Q. Do you remember what house that was?
A. Number one it was.
Q. Do you remember any others?
A. The Sullivans now—the man that is dead was next
1237 door to him. I think above them. Then there was a family in two apartments of a house, one Murphy and another Mescall.
Q. At the time Sullivan went away to sea or about that time who were the people that were living there?
A. I am telling you.
Q. Would you tell the names of any of the other people?
A. There was a Sullivan living above them again.
Q. What was the name of that Sullivan?
A. She was a widow woman.
Q. Is that the woman you described as having five sons?
A. Yes. Five sons and one daughter.
Q. Any more there?
A. There was a Mrs. Kiely.
Q. Was she in the house by herself?
A. She was, sir.
Q. Had she any family?
A. No, only her husband and herself, she carried on a heavy laundry.
Q. Any other name?
A. There was James Scannell, father of Scannell's nephew.
Q. Had he any family?
A. No, he was never married.

Mr. HOWE: I object to this evidence as irrelevant, immaterial and not tending to prove any issue and only going to encumber the record.
1238 Mr. BLAKE: I really must indorce your statement. I do not see what this has to do with the case. We are going into the history of the whole district.

(Cross-examination resumed:)

Mr. DONEGAN: Were there any other people living in this lane?
A. There was a Mrs. Manley.
Q. Had she a family?
A. She had.
Q. Were there many in the family?
A. Three daughters and a son.

Q. Were those people living for any great number of years there?
A. Always.
Q. In Crone's lane?
A. Yes.
Q. You said that at no time were there four families at Sullivan's there?
A. No, sir; there were no four Sullivans at all there.
Q. Did you know Bessie well?
A. I did, sir.
Q. Was she always respectable?
A. Always indeed a very respectable girl, always mild like an old Quaker.
Q. Did she go out to service?
A. Yes, she was obliged to.
Q. When her father died?
A. No, before her father died.
Q. Did her father keep her in the house they were living before she went to service?
A. Of course he did.
1239 Q. Do you happen to know where she went to in service?
A. She went to Mrs. Lyons and she was with her daughter-in-law afterwards. She was in the same family to rear the grandchildren.
Q. If any witness said that this Bessie sold apples at the corner of Nicholas street, would it be true?
A. She did, sir.
Q. At what period of her life did she do that?
A. I believe she left Mrs. Lyons for a little while and went back there again.
Q. You say she left Mrs. Lyons for a while and for a few days she was only selling apples and went back?
A. Yes.
Q. Do you recollect when she went first to Mrs. Lyons?
A. She was a very small little girl.
Q. About how old was she?
A. About 10 or 12 years of age.
Q. How long did she remain with Mrs. Lyons?
A. I suppose she was up to forty years with her or thirty. She was over thirty years with her. I knew her always with Mrs. Lyons living with her.
Q. What was she with Mrs. Lyons?
A. A servant, sir.
Q. Was it not an unusual thing to come back from Mrs. Lyons selling apples?

Mr. HOWE: I object to the question as incompetent, immaterial, irrelevant, and not cross-examination.

1240 Q. When John first went to sea did he go with his brother-in-law Silva?
A. Yes.

Q. Was that the last time he went to sea?
A. Yes, it was, sir.
Q. Do you remember where he went?
A. I think he went to Liverpool and came back again.
Q. Did he go as a sailor?
A. Yes, as a sailor, of course.
Q. You say he had previously been employed in a confectioner shop in Princes street?
A. Yes, sir, for a short time.
Q. What was he there?
A. A runner.
Q. How long did he remain away at that time?
A. He used to go and come.
Q. From this to Liverpool?
A. Yes, and Hannah Callaghan, I often saw her carrying his victuals and bed down to the steamer.
Q. Was it a Cork steamer?
A. It was, sir.
Q. When he went away ultimately to America did you see him?
A. He never came back after that, sir.
Q. Was not he back here two years ago? Do you contend he never came back only that time he came back for his sister's money?
A. Yes.
Q. Was there a rumour in the family is Crone's lane when he went away to America that he was lost?
A. I never heard it sir.
1241 Q. It was never current around the lane?
A. No.
Q. And the Sullivans never said so?
A. No.
Q. When you were first told about the death of this John Sullivan?
A. Mr. Blake's clerk came into me, sir.
Q. Is that gentleman here in court?
A. Yes, sir.
Q. Did he inform me——

(Mr. Howe objected to the question as incompetent, irrelevant and not bearing any issue on the case.)

WITNESS: He told me he was sent up as he was told; I could give proper information about it.
Q. Has Hannah Callaghan recently come to stay with you?
A. She comes on and off to me.
Q. Does she live in your house?
A. She slept last night in it.

Mr. HOWE: I object to that as incompetent, irrelevant, immaterial; it tends to prove no issue in the case.

WITNESS: She came to us last night; she told us she was afraid she would sleep it out, and we told her it was better for her to sleep in our house until morning.

Q. Is she a woman of intemperate habits?

(Mr. Howe objected on the same grounds as before.)

WITNESS: Where would she get the money to drink, sir?

Q. Did you see her eye to-day?

A. I gave her a few halfpence.

1242 Mr. HOWE: I again object on the ground that it is incompetent, irrelevant, immaterial and I should now say, impertinent.

Q. Did you see her eye?

A. I did, indeed.

Q. Do you know how she got that?

A. She was coming in the door when she struck against it; she had not any drink at all when she got it; she fell against the jamb of the door when she got it. I gave her a shilling in the early part of the day; she could not do much on that.

Q. I asked you was she a woman of intemperate habits?

A. She does not take much; a pint of porter would make her tipsy.

Q. Would she get a pint of porter for a shilling?

A. For twopence or three halfpence. She might be tipsy unknown to me.

Q. Was not she very fashionably dressed?

A. Now she is.

Q. Was she as respectable in her appearance as she is to-day?

Mr. HOWE: In order to save time and show the great abuse which counsel is making of the fact that the commissioner cannot rule, it will be admitted by plaintiffs on record that Hannah Callaghan is a very poor woman, and that she appears to-day in court wearing a better dress than she has appeared in before. I hope that will meet the case.

WITNESS: Hannah often wore fine dresses?

1243 Mr. DONEGAN: Did she get any money from any one lately?

A. She got no money from anyone but from me.

Q. Did you give that money freely from yourself?

A. I gave it to her.

Q. You never got it from anybody?

A. I never got money from anyone. I gave her money six or seven years ago.

Q. Within the last year did you give Hannah Callaghan any sum of money?

(Mr. Howe objected on the same grounds as before.)

WITNESS: I gave her a shilling and a two shilling piece, and paid the rent for her little house for some weeks.

Q. Where did you get that money?

A. By hard sweat and labor.

Q. Am I to understand that it was your own money?

A. It was my own money. It was all honestly got money by the sweat of my brow.

Q. You paid her rent and gave her a shilling a week?

A. Often a shilling, but not always.

Q. You paid the rent continually?

A. Yes.

Q. Did you get any money from Mr. Wright?

(Mr. Howe objected to the question as incompetent, irrelevant and immaterial, not cross-examination and not tending to prove any issue.)

WITNESS: I did not get it, sir.

1244 Cross-examined by Mr. COLLINS:

Q. You knew John very well?

A. Yes, I did.

Q. You were living in Crone's lane number two when he left the country?

A. Yes.

Q. Were you living in the same house when he came last?

A. In the very same house.

Q. He could have found you out?

A. Yes, sir.

Q. Did he call on you?

A. Not to my knowledge.

Q. Did he ever call at your house?

A. No, sir; he did not.

(By Mr. RIDDLE:)

Q. Do you remember John being up last when he was here?

A. He never came here at all.

(By Mr. COLLINS:)

Q. Do you know Mrs. Dooley up there?

A. I do, sir.

Q. What is her address?

A. She is dead since a couple of months after John Sullivan going away. He went to enquire whether there was anyone living there by the name of Sullivan; he went there to enquire of Mrs. Dooley, but she said there was not. He inquired would she know any one of the Sullivans or anyone that knew him when he was living there.

Q. To whom did he say this?

A. To this Mrs. Dooley.
Q. I thought you said Mrs. Dooley was dead after he went away?
1245 A. She died after the last time he was here. He asked her, "Do you recollect the Sullivans that lived in the thatched house — I lived there?" and she said, "I don't."

(By Mr. RIDDLE:)

Q. Mrs. Dooley told you this?
A. Indeed, she told me nothing. She told Mrs. Connell about it. Mrs. Connell told me.
Q. Did you tell Mrs. Connell you knew John Sullivan yourself?

The question was objected — on the same grounds as before.

Q. How long was it since he was through the lane that you heard of it?
A. About three or four months after he went away.
Q. When did you hear that John Sullivan was dead?
A. About 12 months ago or a year and a half. I think it was about twelve months.
Q. How did you hear it?
A. I would not hear it only for Mr. Blake's man coming to enquire about him.
Q. Did I understand you to say that John Sullivan had called at your house once?
A. No, sir. I did not say that.
Q. How old is Hannah Callaghan?
A. Sixty or sixty-two years.

1246 At the close of the day's proceedings:

Mr. HILLIARD recalled:

By Mr. HOWE: I hand in a paper, plaintiff's exhibit marked "J," and ask is that a true and correct copy of the entries you testified to before?
A. Yes.
Q. Have you compared them?
A. Yes.
Q. You wrote it yourself?
A. Yes; it is true and correct.

The inquiry was adjourned until 10 o'clock on Friday morning, November 22d, 1901.

NOV'R 25TH.

Hearing resumed in the above-entitled case at the office of the consul of the U. S. A. in the city of Cork at 10 a. m. this day, the following proceedings were held:

NORAH KIELY, a witness produced in behalf of complainants, being first duly examined and cautioned, and then duly sworn, was examined by Mr. Howe as follows:

Q. Where do you live?
A. 85 Tower street.
Q. How long have you lived there?
A. Forty-three years.
Q. How far is Tower street from Crone's lane?
A. About 50 or 60 yards I should say.
Q. Did you know Peter Sullivan who lived in Crone's lane?
A. I knew him in Evergreen street.
Q. Where did he work?
A. Beamish's brewery.
Q. What family did he have?
A. A son and two daughters.
Q. What was his wife's name?
1247 A. Abina Sullivan.
Q. What children did he have?
A. Three children, two girls and a boy; what I knew.
Q. What was the name of the boy?
A. John.
Q. What were the girls' names?
A. Elizabeth and Ellen.
Q. Did you know them as long as they lived in Evergreen street?
A. I knew Ellen perfectly well, but did not know much about Elizabeth. I never knew John, not having seen him.
Q. What became of Elizabeth?
A. She was always in a situation. I did not know much about her, I seen her once or twice.
Q. What situation was she in, and with whom?
A. A lady by the name of Mrs. Lyons. I did not know the lady.
Q. Was Ellen married or single?
A. Married.
Q. What was her husband's name?
A. Well, I think his name was Silvia. I think so; I never seen the man in my life.
Q. Did Ellen have any children?
A. No, not as I knew.
Q. Do you know Hannah Callaghan?
A. Perfectly well.
Q. How long have you known her?
A. Well, I suppose I know her 35 or 36 years while she was in the neighborhood.
Q. With whom did she live?
1248 A. With Mrs. Sullivan, her aunt, during the time I knew her.
Q. Was that Mrs. Sullivan the wife of the Peter Sullivan whom you have mentioned.
A. Yes.

Q. Did you ever hear Hannah speak to Mrs. Sullivan as her aunt?

A. Frequently.

Q. Was Hannah generally known as the niece of Abbe Sullivan?

A. All round the neighborhood.

Q. Have you ever heard it claimed in the neighborhood until this time that Hannah was not the niece of Mrs. Sullivan?

A. Never, I always heard she was.

Q. Do you remember when the old man Peter died?

A. I do.

Q. Did he die after his daughter's death?

A. Yes; he was the last that died, the old man.

Q. Who lived with him at the time of his death?

A. Hannah.

Q. Hannah did?

A. Hannah Callaghan.

Q. Is that Hannah Callaghan the same Hannah Callaghan who testified in this case?

A. The same Hannah Callaghan that I know for the past 35 years She is the same Hannah still.

Q. Do you know what the maiden name of Abina Sullivan was before she married Peter Sullivan?

A. Abinah McAuliffe I heard. I always heard she was McAuliffe.

Q. From whom did you hear it?

A. From several; but really I suppose they are dead and gone; I could not put my hand on them now; it would not be very easy.

1249 Q. Did you ever hear from any member of Peter Sullivan's family what became of John Sullivan?

A. Never.

Q. Do you remember when Ell[illegible]a Silvia died?

A. I do.

Q. Were you at her funeral?

A. No.

Q. Do you know where she was buried?

A. Well, I did not hear; they were in Evergreen street and I was in Tower street.

Q. Do you know what happened to Elizabeth, whether she lost her mind or not?

A. I know she died in Bull's asylum.

Q. Were there any other members of the family of Peter Sullivan other than Peter, Abina, the two girls, and John Sullivan?

A. That is what the family was composed of.

Q. How far was your back door from Peter Sullivan's back door?

A. A small square of waste ground about 40 or 50 yards from the back gates.

Q. Did both back doors open on the same square of ground?

A. The same square of ground. The houses were back to back.

Q. There was nothing, then, between your back door and their back door?

A. No.

Q. Did you know the sisters of Abina McAuliffe?

A. I did not know any of the McAuliffes. I do not know
1250 anything at all about the McAuliffes, only the Sullivans.

(Propounded by Mr. BLAKE:)

(Mr. DONEGAN cross-examines the witness:)

Q. These houses that were forty or fifty yards apart do I understand you to say that it was your house and the house in Crone's lane?

A. No, the house in Evergreen street.

Q. Now you say you were forty-three years living in Tower street?

A. Right.

Q. And that is close to Crone's lane?

A. Yes.

Q. Did you know any other families of Sullivan living in Crone's lane?

A. No, they may be there unknown to me, and I never would know the Sullivans only that the houses were back to back. Never.

Q. You say you never would know the Sullivans only that the houses were back to back; that is, your house in Tower street and the house in Evergreen street, but we are talking now of Crone's lane?

A. Yes.

Q. Well, now you say you never would have known the Sullivans but that your houses were back to back. Very well did you know them when they lived in Crone's lane?

A. No.

Q. Then your knowledge is entirely confined to their living in Evergreen street?

A. Yes.

Q. When did you first know this family?

A. About thirty-five years ago.

Q. When you knew them was Ellen married?

1251 A. No.

Q. Did you know Ellen intimately?

A. Yes, to speak to.

Q. When was she married?

A. I do not exactly know; I do not make a great deal of freedom with the people about. She used to sit with me when I minded my children. She used to sit outside with me.

Q. You never knew John?

A. Never. Never seen him to my knowledge.

Q. Did you know the husband of Ellen?

A. No.

Q. Did you ever see him?
A. Never.
Q. You say you cannot tell me when Ellen Sullivan was married?
A. No, but that I heard she was married. I did not take note at the time, I thought there was no necessity.
Q. Was that twenty-five years ago?
A. No, thirty-five or perhaps more.
Q. Did you never know these people, or any of them, before they came to Evergreen street?
A. No.
Q. You are quite sure of that?
A. I am certain.
Q. Was Abina a very old woman when you knew her?
A. She was a very old feeble woman when I knew her.
Q. Was it since these proceedings commenced that you learned the surname of this old woman?
A. I always knew her surname; I always knew she was McAuliffe.
1252 Q. Do you remember when Ellen died?
A. I do, I remember when she died.
Q. In or about what time?
A. Twenty-nine or thirty years ago. I buried a child at the very same time, and I have reason to remember it.
Q. Did you know anything at all about Bessie?
A. What I knew of Bessie was that she was away in a situation with Mrs. Lyons, a lady that I did not ever seen nor know.
Q. Did you ever see Bessie?
A. Once.
Q. Do you know what happened to her?
A. I know she lost her mind.
Q. Did you ever hear that she died leaving money?
A. I heard something about it.
Q. But did you hear that at the time or recently?
A. When she died about twelve or thirteen years ago. There was a girl I knew in Bull's minding her when she died; I knew the girls.
Q. If anybody said that she died twenty-eight or thirty years ago would that be true?

(Mr. Howe objects to the question as incompetent, irrelevant, and immaterial.)

A. No.
Q. Do you know a lady by the name of Mary Riordan?
A. No, I do not.
Q. Do you — a woman by the name of Margaret McGrath?
A. No.
Q. Do you know that these people are claimants here?
A. Yes, I heard it?

1253 Q. Did I understand you to say that you heard Bessie died leaving money?

A. I heard she did.

Q. Did you know that Hannah Callaghan was related to Bessie?

A. The old woman told me she was her niece, a first cousin of Bessie.

Q. Were you on speaking terms with this Hannah Callaghan all these years?

A. Yes, if I met her we said "Good morning, good evening." That is all.

Q. Do you know whether she knew of this money?

A. Really, I do not; I suppose she did not till it was left to her.

Q. I am speaking now of Bessie's money. I do not want the witness to misunderstand me.

Q. Do you know whether Hannah ever knew that Bessie left money?

A. I do not know. I heard it in the neighborhood that she was buried and left money; that is all I know.

Q. You did not tell Hannah Callaghan?

A. I did not, indeed. I did not see her to tell her.

Q. Do you know what become of Silvia?

A. No.

Q. Do you remember when Peter died, the date, the year, in or about?

A. No. I heard that he was dead; that is all I know.

Q. While you were living in Tower street 43 years, did you know Crone's lane well?

A. Perfectly well.

Q. And the people living in it?

A. Yes.

1254 Q. And do I understand you to say you knew of no Sullivans living in that lane all those years?

A. No.

Q. That is all I ask the witness.

Cross-examined by Mr. RIDDLE:

Q. Were you living in Tower street at the time Peter Sullivan died?

A. I never lived anywhere else since I left my mother, and was married.

Q. And you say you only heard of his death?

A. That is all.

Q. How many times were you in the house of Peter Sullivan?

A. Well, I could not exactly tell you; I may have been a dozen times, and I never went in but the back way when I was invited.

Q. But you never knew John Sullivan?

A. Never. Never seen him.

Q. Did you ever hear of him?

A. Oh, yes, I heard of him, but never seen him at that time. I heard of him, I heard he went away, but I never seen the man.

Q. Well, he was living in the house at that time was he not?

A. He was, it was out of that house he went away, and we never seen him after.

Q. Did you hear that John Sullivan was up at Evergreen street in the summer of 1900?

(Objected to as not cross-examination by Mr. Howe.)

1255 A. I heard he was; I heard he came here about Bessie's money, that is all.

Q. When did you hear of him?

A. When Bessie died he came for her money. I did not know what he came for, but I heard he was in the neighborhood.

(Re-examined by Mr. Howe:)

Q. This square that was between your back door and Mrs. Sullivan's back door, what was that used for?

A. Waste; we dry the clothes there.

Q. Did you dry your clothes there?

A. Yes.

Q. Did Mrs. Sullivan dry her clothes there?

A. Yes.

Q. Was it in that way that you and Mrs. Sullivan came to talk to each other?

(Mr. Donegan objects that this question does not arise out of cross-examination.)

Bridget Cronin, a witness for complainants, being duly examined, cautioned, and sworn, was then examined by Mr. Julian:

Q. Your name is Bridget Cronin?

A. Yes.

Q. Where do you live?

A. Where 12 Abbey street.

Q. Is that off of Evergreen street?

A. It is.

Q. How long are you living there?

A. About eleven years.

1256 Q. Where did you live before?

A. I was born at the Cross of Evergreen.

Q. About what is your age?

A. I suppose I am about 60 years of age; not exactly but it is not much.

Q. Did you know Peter Sullivan?

A. I did, sir.

Q. Did you know his wife?

A. I did.

Q. What was his wife's name?
A. Abbe McAuliffe.
Q. Where did they live?
A. They lived in Evergreen street.
Q. Of whom did their family or household consist?
A. They had three children, Bessie, Ellen and Johnnie.
Q. Their own three children?
A. Yes.
Q. Did anyone else reside with them in the house?
A. Yes'm, Hannah Callaghan.
Q. Do you know if Hannah Callaghan was any relation to the Sullivans?
A. Yes, their first cousin, Mrs. Sullivan's sister's daughter; that is, she would be Mrs. Sullivan's niece and first cousin to the Sullivan children.
Q. Were the Sullivan girls playfellows of yours?
A. Oh, no.
Q. They were not? Do you recollect what happened Bessie Sullivan? Of your own knowledge did Bessie stay at home?
1257 A. She was in a situation. I think she was in a situation when her people died; I think she was; I am not really sure.
Q. Do you know whether Bessie married?
A. I do not think she was ever married.
Q. Did Ellen stay at home, or did she go into a situation?
A. Ellen was always at home.
Q. Did Ellen marry?
A. She did.
Q. Do you recollect the name of her husband?
A. Silvia, I think.
Q. What was he?
A. He was a sailor.
Q. Is Ellen alive, or did she die?
A. She died.
Q. Had she any children?
A. No, she had not.
Q. Do you remember John Sullivan?
A. I do.
Q. Who was he?
A. He was Peter's son.
Q. Peter's son?
A. Yes.
Q. About what age was he, when you first recollect him?
A. I suppose he was then—well, I really could not say; about twelve or fourteen years.
Q. Was he going to school then, could you say?
A. Well, I could not really say.
Q. Do you remember his going away?
A. I do.

Q. Where did he go to?

A. He was in the habit of going to sea. A short time before he went to stop away.

Q. Well, do you recollect his ever coming back, after going to sea first?

A. He was in one of those weekly boats.

1258 Q. You mean leaving Cork and going across to England and coming back again?

A. Yes, and coming back again.

Q. Well, do you remember his going away the last time?

A. I do.

Q. How long ago do you think that is?

A. Well, indeed, I suppose it is forty years, if it is not more it is not less.

Q. Did you ever see him after that?

A. Never.

Q. Do you know where he was all these years?

A. No, then, I do not.

Q. Do you know whether the Sullivan people, Peter Sullivan and his wife, ever heard from John after he went away?

A. Well, I recollect Mrs. Abbe Sullivan saying that she had a letter from him.

Q. Could you say whether that was long before Mrs. Abbe Sullivan's death?

A. It was then.

Q. Do you recollect the deaths of Abbe Sullivan, Peter Sullivan, and Ellen Silvia?

A. I do.

Q. Were you at, or did you see, their funerals?

A. I seen their funerals.

Q. Do you know where they were buried?

A. In the Botanical gardens, I think.

Q. How long did you know Hannah Callaghan to live with the Sullivans?

A. All my life, as long as I remember anything.

Q. Do you remember Mrs. Sullivan explaining whom Hannah Callaghan was?

A. I do.

1259 Q. I heard her saying she was her sister's daughter.

A. Was Peter Sullivan the last of the Evergreen Street household to die?

A. I think he was.

Q. Was Hannah Callaghan residing with him up to the time of his death?

A. Well, I could not exactly say that.

Q. Do you know the Hannah Callaghan we have had here, and who claims this estate? Is she the same Hannah Callaghan as you know to be the niece of Mrs. Abbe Sullivan?

A. She is the very same.

Q. Do you remember where Peter Sullivan worked?
A. In Beamish & Crawford's brewery.
Q. Do you know who used to take him his breakfast or his dinner?
A. Well, if I do not make a mistake, I believe he used to come to it.

Cross-examined by Mr. BLAKE:

Q. Did you know any of the sisters of Abbe Sullivan?
A. No, I did not.
Q. Did you know Hannah Callaghan's mother?
A. I did not.

Cross-examined by Mr. DONEGAN:

Q. Have you had an intimate knowledge of the Sullivans for years?
A. I have, of course.
Q. Going back how many years?
A. Well, I knew them always in the neighborhood, since I was born myself; since they came to live in it.
1260 Q. And did you know Margaret, or did you know Peter Sullivan's wife?
A. I did.
Q. Do you know whether she had any sisters or not?
A. I do not know whether she had any sisters or not.
Q. You said, in your direct examination, that you heard Mrs. Sullivan explain to you that Hannah was her niece?
A. I did.
Q. When did she do that?
A. She said that in the second next door to herself, when with a young girl of the name of Donegan.
Q. Was this in Crone's lane or Evergreen street?
A. Evergreen street.
Q. What was the occasion or the necessity of her explaining this to you?
A. She used to come into this house if she wanted a message for her daughter, a shirt maker.
Q. Well?
A. I heard her to say she was very fond of her sister's daughter; she thought as much of her as of her own children; she was her aunt.
Q. She did not tell you who her mother was, did she?
A. Not exactly me; it was in the house where I was working, and there was only four people present at the time.
Q. She told you nothing more?
A. No.
Q. You said that John went away forty years ago, in answer to Mr. Julian?

A. Yes, about that time.

Q. How do you fix forty years ago?

1261 A. Well, I left Evergreen street for the last thirty-eight or thirty-nine years, and Johnny Sullivan was gone before I left.

Q. Well, now, you said that this young man was twelve or fourteen years of age when you knew him. Do I understand you to say that he went away at twelve or fourteen?

A. Not at all.

Q. How old was he when he went away?

A. Twenty-two or twenty-three.

Q. Do you know when Ellen married?

A. Why, I was very small when Ellen married.

Q. You were very small when Ellen was married; what do you mean by that?

A. I suppose I was seven or eight when she was married.

Q. You answered in your direct examination that Silvia was the name of the man she married.

A. They used to call her Ellen Silvia.

Q. Are you sure his name was Silvia?

A. Yes, I am sure.

Q. Had you a doubt about it?

A. No.

Q. Well, why did you say "I think"?

A. Well, of course, I only think myself that was her name; I have no other name for her; only Ellen Sullivan or Ellen Silvia.

Q. Did you hear the name Silvia made use of in discussion in the locality lately very much?

A. Indeed, I did not, only since this affair took place.

1262 Q. Since this affair took place?

A. Yes.

Q. Did not you know Ellen well?

A. I did.

Q. And she was married since you were seven or eight years of age; did you not always know her as Ellen Silvia?

A. I have no doubt at all about her name. She was called Ellen Sullivan more than Ellen Silvia. It was more a habit.

Q. Why was she called Ellen Sullivan?

A. Well, that was what the old people used to call her.

Q. How old was Hannah?

A. I suppose she is over sixty.

Q. The same age as yourself?

A. Oh, Hannah is a little older than I; excuse me.

Q. When did Abbe Sullivan die?

A. Over thirty year ago, I think. She was the second person, if I do not make a great mistake, who died in the family, but I cannot be really positive.

Q. When did Peter die?

A. Peter was the last of the three to die; there was not only about two years between the three.

Q. You say you could not exactly say that Hannah lived with Peter up to the time of his death?

A. I could not say.

Q. Did you know the old man in Evergreen street?

A. I knew him well.

Q. Did you ever know Bessie?

A. I heard she died.

1263 Q. Did she leave any money?

A. Since this took place I heard that Johnnie came over for it.

Q. Who told you that Johnnie came over for it?

A. The neighbors.

Q. When did you hear that?

A. I heard it about Christmas last.

Q. Do you know whether anybody saw him?

A. I do not know.

Cross-examined by Mr. RIDDLE:

Q. Did you have an intimate acquaintance with Peter Sullivan's family?

A. I had.

Q. Were you often in their house?

A. Never. They were a family that never made much freedom with any person.

Q. Did you see John just before he went away the last time?

A. Yes.

Q. Can you describe his personal appearance?

A. He was a stout, very good looking young man; he used to wear blue pilot sailor clothes and a glazed peaked cap.

Q. Was he tall or short?

A. He was a short, stout young man, rather very good looking and blue eyes.

Q. Did you see him often?

A. I did very often: I could not go to school without passing their house, nor to chapel without passing their house; it was in the thoroughfare.

1264 Q. You say Hannah is older than you are?

A. Sure; it is not a great deal, but she was born before I was, how long or short I cannot say because of course Hannah Callaghan was not born in Evergreen road.

Q. How old were you when John Sullivan went away for the first time?

A. I think I was about seventeen. Seventeen or eighteen, I think.

Q. Is that all?

A. That is all.

CATHERINE MURPHY, a witness for complainants, being duly examined, cautioned and sworn, was then examined by Mr. Julian.

Q. About how old are you, Mrs. Murphy?
A. I was sixty-six last July; born in '35.
Q. Where do you live now?
A. I live in Crone's lane, No. 5.
Q. About how long are you living in Crone's lane?
A. Eleven years next February.
Q. Where did you live before you came to Crone's lane?
A. In Tower street, where I was born.
Q. How far is that from Crone's lane?
A. Just at the top, adjoining; a few yards.
Q. Did you know Peter Sullivan and his family?
A. Yes, well, five in number.
Q. Do you remember where Peter Sullivan worked?
A. I do well, Beamish & Crawford's brewery.
1265 Q. What was Peter Sullivan's wife's name?
A. Abbe or Abina, McAuliffe before her marriage, and Sullivan by her husband's people.
Q. Had they any children?
A. Three. They had two daughters, and John, the deceased man.
Q. What were the daughters' names?
A. Ellen and Bessie.
Q. Where did they reside when you first knew them?
A. In Crone's lane.
Q. Did they remain residing there the whole time you knew them?
A. No.
Q. Where did they remove to?
A. They removed to Evergreen street, nearly opposite Nicholas street.
Q. Did you know Bessie and Ellen very well?
—. —.
Q. You were school fellows, you say, in the Presentation Convent school.
Q. You were school fellows, you say, in the Presentation Convent school?
A. We were. In Douglas street, with our bibs on us.
Q. Do you recollect when done with school whether Bessie remained at home?
A. Bessie was knocking about the house for some time, and after that she went to Lyon's to live.
Q. In what capacity did she go?
A. As domestic servant.
Q. When at Lyon's used you to meet Bessie?
1266 A. Yes, I often went a bit of the way with her, not to enter no communication with the Lyon's, but I often saw her enter and went with her over.

Q. From where would you go with her?
A. I go from maybe her own house in Evergreen street.
Q. What happened to Bessie?
A. Well, Bessie lost her reason and was put into an asylum.
Q. Did Ellen remain at home or did she go into service?
A. Ellen never went to service; she and I were learning shirt making after we left school.
Q. Do you recollect for whom you and Ellen worked?
A. I do well, we worked for Dowden's in Patrick street, the present Dowden's shop, but the family are not there.
Q. Where used you to work? Used you to work separately or together?
A. Well, we worked for a woman who had work from Dowden's.
Q. Was it in the same room that you worked together?
A. At the same table; at the one table.
Q. That is what I wanted to know.
Q. Did Ellen marry?
A. Yes, she married a foreigner, a stranger in Ireland.
Q. What was he?
A. He was a sailor.
Q. Do you remember the marriage?
1267 A. I was present when she was married, we were that intimate.
Q. Had Ellen any children?
A. No none.
Q. Do you remember Peter's son John?
A. I do well, and knew him a little boy growing.
Q. Do you recollect his going to school?
A. I do.
Q. After he left school did he get any employment in the city?
A. Well, he was doing something around; I could not exactly say but he was very little at work in Cork.
Q. What occupation did he afterwards follow?
A. A seafaring life.
Q. Did he go for long or short voyages at first?
A. Well, I think in the commencement he did not go foreign, but he did after and remained away.
Q. After he went foreign did you ever see him again?
A. No.
Q. Do you know whether he used to correspond with his parents after he went foreign?
A. Yes, while the parents lived, but I could say nothing after.
Q. Do you know what part of the world he was in?
A. I knew he was in some part of America.
Q. About what age do you think John Sullivan was when he went foreign?
A. From 20 to 21 or 22.
Q. Were you very intimate with the Sullivan family?
A. Yes every day after school I go there.

1268 Q. Will you explain now, in your own way, how it was you were so intimate?

A. Well, my mother and Abina McAuliffe were from one country Carrigaline so that the intimacy sprang up between the youngsters; we were young then and intimately acquainted.

Q. Did your mother continue her friendship with Abina McAuliffe?

A. Yes, up to my mother's death.

Q. Who composed the household of Peter Sullivan beside himself, his wife and his three children?

A. Hannah Callaghan.

Q. Do you recollect when Hannah Callaghan came to live with the Sullivans?

A. I do, she was from about eight to ten. Of course I have not exactly the date for I was born where I am living and Hannah was not, but as well as I can recollect.

Q. Before Hannah Callaghan came to live with Sullivans did you ever meet her mother?

A. Yes, I knew her intimately.

Q. Do you recollect what Hannah Callaghan's mother's name was?

A. Bridget McAuliffe by her parents and Bridget Callaghan by her husband.

Q. Why did Hannah Callaghan come to live with the Sullivans?

A. Through the death and loss of her home and parents.

1269 Q. How was Hannah Callaghan treated by the Sullivans?

A. Very well; the same as Abina treated her own children.

Q. Do you remember how Hannah used to call Abina Sullivan?

A. Yes; if she were speaking she would address her as aunt.

Q. Did I ask you as to whether you knew whether John wrote to his parents or not?

A. You did.

Q. How long did Hannah Callaghan live with the Sullivans?

A. Up to the break up of the Sullivan home.

Q. When was the Sullivan home broken up?

A. Well, I suppose 30 years ago.

Q. What happened to break it up?

A. The death of the Sullivans.

Q. Do you recollect which of the Sullivan's died last?

A. The father died last.

Q. Was it on his death that it was broken up?

A. Yes. There was no one else to hold it on.

Q. Did Hannah Callaghan reside there up to the death of Peter Sullivan?

A. Yes she did.

Q. Did you tell me where Peter Sullivan worked?

A. Yes, in Beamish's. He got a pension.

Q. Did you know the Hannah Callaghan who is the claimant

here, and whom we have examined here, is she the same
1270 Hannah Callaghan as you recollect coming to live with the Sullivans?

A. The very same as sure as there is a soul existing in my body, she is the same person.

Cross-examined by Mr. BLAKE:

Q. You knew Hannah Callaghan's mother Bridget?
A. Yes, well.
Q. Did you know her sister Mary?
A. No, I only knew Mrs. O'Callaghan and her daughter Hannah.
Q. Did you know any sister?
A. No, I was born in the city.
Q. Hannah Callaghan's mother, where did she reside?
A. She lived in the country.
Q. How did you know her in Carrigaline?
A. I knew Abina Sullivan.
Q. Did any other sisters visit her?
A. No. I was born in the city and I had no way of knowing these.
Q. Did you know Humphrey Sullivan?
A. No.

Cross-examined by Mr. DONEGAN:

Q. You say you met Hannah Callaghan and her mother at Mrs. Sullivan's house, was that many years ago? How old was Hannah then?
A. About 8 to 10 years.
Q. And at that time was the mother living in the country Carrigaline.
A. Yes.
Q. I think your mother also came from Carrigaline?
1271 A. My mother and the McAuliffes were neighbors. Forty-six years ago my mother died.
Q. Did you ever hear your mother talking about the Carrigaline people, or about Abbe McAuliffe or her people?
A. Never heard them say anything about them. I was young when my mother died.
Q. And did you say that Hannah Callaghan's mother was the only relation of Abbe that you knew.
A. The only one that I knew. She had more relations but I never seen them.
Q. Had Abbe any brothers?
A. Not that I know of. I was born in the city and I knew very little about people that lived and were born away.
Q. Abbe never spoke to you about having any brothers?
A. No, I never asked her, but if my mother lived I would know more about the former family, but she died when I was young.

Q. When did Hannah's mother die?
A. She was dead and buried when I heard it.
Q. When was that?
A. Well, I suppose she might be 10, 12, or 14 years dead.
Q. Do you know when Hannah first came to live with the Sullivans?
A. I know that she was a very young girl growing up, from 8 to 10 years old, and I suppose it is over 20 years ago.
1272 Q. But did you not tell me she was that age when they were visiting.
A. You said nothing about visiting till now, but you asked me how old she was when she came to the Sullivans and I said 8 or 10.
Q. I asked you originally how old Hannah Callaghan was when you saw her with her mother at the house of the O'Sullivans?
A. Younger then. When she came to the Sullivans I signified that she was from 8 to 10.
Q. When did Callaghan the man, her father, die?
A. Hannah's father, I never saw him.
Q. Now perhaps you could tell me whether Hannah had any brothers and sisters?
A. I could say nothing about any but Hannah.
Q. Had Hannah's mother any children; supposing it was said that she had 5 children, including Hannah, would that be consistent with your recollection?
A. I did not hear she had any number in particular.
Q. Did you hear she had any?
A. Well, I heard she had some, but I did not hear the number.
Q. You do not know anything about them?
A. Not a bit only Hannah and her mother. I was earning my own living.
Q. What was your mother's maiden name?
A. My mother's name was Boughig.
Q. Was she married in Carrigaline?
A. I do not know but she was a native of that place.

1273 Cross-examined by Mr. RIDDLE:

Q. Have you known Hannah well since Peter's death?
A. Intimately.
Q. How often would you see her?
A. Well, I would every day go into the aunt's house.
Q. Since Peter's death?
A. Oh, many times. She always lived about the quarter.
Q. Where did she live?
A. She lived with a family up to the top of Crone's lane, Bryan's two sisters and a mother.
Q. What did she do?
A. Well, she earned her living very well for many years. She was a beautiful lace worker, embroidery and those expensive macassars.

Re-examined by Mr. JULIAN:

Q. Three of the Sullivan family died in Evergreen street, and had lived in Evergreen street:
A. Yes.
Q. Can you say which of the Sullivan family died first?
A. Ellen, Ellen Silvia by her husband.
Q. Which of them died secondly?
A. The mother.
Q. And the one that died last?
A. Peter Sullivan.

(Objection by Mr. Donegan.)

Q. Could you give us an idea as to how many years ago it is since Peter died?
1274 A. Well, the three members of the family are dead about 30 years.
Q. Now, did Hannah's mother die before or after Mrs. Abina Sullivan?
A. Hannah's mother died many years before the Sullivans, because Hannah came then to live with them.
Q. In answer to Mr. Donegan I am told that you said that Hannah's mother died about 14 years ago?
A. I did not nor he did not ask me what number of years she died in. Fourteen years ago Bessie died.
Q. If that question were asked and you answered 14 years ago, could you have understood it?
A. I could not have understood it for I did not answer it. Bessie died 14 years ago in the asylum.

Cross-examined by Mr. DONEGAN:

Q. Did you say that you did not answer this question that this woman died 14 years ago?
A. That was Bessie.
Q. Was I not talking at the time about Hannah Callaghan's mother?
A. You were, but you told me to give a sketch in a rough way of how long Mrs. Callaghan was dead, and as well as I could I answered you.
Q. That was 14 years?
A. Yes.

NORA O'CONNELL, a witness in behalf of complainants, being duly examined, cautioned and sworn was then examined by Mr. Julian.

Q. You are a widow?
A. Yes.
Q. Where do you live?

1275 A. 17 Evergreen street.
Q. Were you born there?
A. I was.
Q. How old are you?
A. Fifty years old.
Q. Do you recollect Peter O'Sullivan?
A. I do.
Q. Where did he live?
A. At number 9 Evergreen street—9 or 10.
Q. Where did he work?
A. Beamish and Crawford's brewery.
Q. Do you remember the name of his wife?
A. I do, Abbe McAuliffe.
Q. Had they any children?
A. Three.
Q. What were their names?
A. Bessie, Ellen and John.
Q. Was any one of them a greater friend of yours than the other?
A. Ellen was.
Q. Were they older than you?
A. Oh, they were.
Q. Was Bessie living at home?
A. No, at that time she was in a situation.
Q. Do you know where she was in a situation?
A. At Mrs. Lyons'.
Q. Was Ellen at home or in a situation?
A. At home always.
Q. Was Ellen married?
A. She was.
Q. What was her married name, and what was her husband?
A. Her husband was a foreign sailor and his name Silvia.
Q. Had Ellen any children?
1276 A. Not to my knowledge.
Q. How used Ellen to occupy herself?
A. Needlework, plain work.
Q. Do you know any particular person or firm that she worked for?
A. For Dowdens of Patrick street, and for Fowler and Scully of Patrick street too.
Q. Do you recollect the son John?
A. Yes, I see him once a young man.
Q. Do you know as to whether he remained in Cork or whether he went away?
A. He went away that time.
Q. Did you know where he went to?
A. America.
Q. Were you very intimate with Ellen?
A. I was.
Q. Used you to visit Ellen at her house?

A. I used.

Q. Do you know whether the parents of John Sullivan used to receive letters and money from him?

A. I heard that they used to get letters from him, Ellen say that, but of course I did not know about the money.

Q. During the time that you used to visit the Sullivan house was there any other person living with them in the house?

A. Hannah O'Callaghan.

Q. How long did Hannah Callaghan continue to live with them?

1277 A. I think the home was broken up by the death of the uncle.

Q. Whom do you mean by uncle?

A. Peter Sullivan.

Q. How used Hannah Callaghan address Abina Sullivan?

A. As "Aunt Abbe."

Q. Do you recollect which of the Sullivan family living at Evergreen street died first?

A. Ellen.

Q. Did you attend her funeral?

A. Yes.

Q. Where was she buried?

A. St. Joseph's cemet-ry, formerly called Botanical gardens.

Q. Did you actually see her dead?

A. I did.

Q. Which of the Sullivans died next?

A. The mother.

Q. And then I suppose the father?

A. Yes.

Q. Could you give us an idea of how many years Mrs. Abina Sullivan is dead?

A. They are all in or about 29 years dead, I cannot go closer than that.

Q. How was Hannah Callaghan treated by the family?

A. As one of their own.

Q. Do you recollect what happened to Bessie?

A. Her head got bad, and I heard she went into an asylum.

Q. Do you know the Hannah Callaghan who is claiming here and who was examined by us here?

A. I do.

Q. Is she the same Hannah Callaghan whom you knew to be residing with the Sullivans.

1278 A. The very same.

Q. And the same Hannah Callaghan used to call Mrs. Sullivan "Aunt Abbe"?

A. The very same.

Q. Have you any idea, Mrs. O'Connell, how old John would be when you saw him before he left?

A. From 17 to 18, but of course I could not say.

Q. You can only give us what your opinion was?
A. Yes.

Cross-examined by Mr. BLAKE:

Q. Did you know any sisters of Abina McAuliffe?
A. No.

Cross-examined by Mr. DONEGAN:

Q. When did Bessie go to live with Mrs. Lyons? Was she there as long as you recollect her?
A. She used to go backwards and forwards to her parents.
Q. I understand she was a servant?
A. She was, with Mrs. Lyons, yes all the time I knew her.
Q. How many years would that be?
A. Four or five, may be more.
Q. Did you only know Bessie for five years?
A. Oh, I knew her always.
Q. The question I asked was this, "All the time that you knew her was she living with Mrs. Lyons?" Did you know her when she was living at home with her parents?
A. No, I did not.
1279 Q. When did you first get to know them?
A. I knew her. I did not know about Bessie at all, only Ellen.
Q. When you first knew Bessie was she with Mrs. Lyons?
A. She might have been in some other situation.
Q. Do you recollect when Ellen married?
A. No, I do not.
Q. You cannot give me any idea what time it was?
A. I could not indeed.
Q. Do you remember when John went away?
A. A good many years. He was only a young man when I knew him.
Q. But you knew him?
A. Oh, I knew him once.
Q. Was Ellen married at the time you knew her?
A. She was.
Q. Did you ever hear that she had a child that died?
A. I never knew she had a child.
Q. How old were you when you remember John Sullivan?
A. I suppose I was ten or twelve years old.
Q. Do you remember what kind he was?
A. A stout fair young man.
Q. Was that when he left, how old were you when he left?
A. Ten or twelve.
Q. Are there many Mrs. Connells living in the neighborhood where you are living?

A. Yes, a good many.

1280 Q. Do you recollect seeing John Sullivan in 1900?

A. I did not see his face, but I see a stranger looking for a family of the name of Sullivan.

Q. Whom did he speak to?

A. Mrs. Dooley.

(Objected to by Mr. Howe, on the grounds not cross-examination.)

Q. Is the lane narrow?

A. It is.

Q. Did you hear what he said to this Mrs. Dooley?

A. She said he was looking for any family who lived there by the name of Sullivan.

Q. Did you hear the entire conversation between them?

(Objected to by Mr. Howe on the grounds "not cross-examination," and incompetent.)

A. No more happened than the one word, she did not say she did not know the family.

Q. Did you communicate with the Sullivans telling them there was anybody asking for them?

(Objected to by Mr. Howe on the grounds "not cross-examination.")

A. No, I did not.

Q. Do you know whether he spoke to anybody else in the lane or not?

A. I do not.

Q. Where you are living is this quite close to Crone's lane?

A. Yes.

Q. Do you know whether he went up that lane or no?

A. I do not.

1281 Cross-examined by Mr. RIDDLE:

Q. You say you saw this stranger yourself?

A. Yes.

Q. And you heard the conversation with Mrs. Dooley?

(Objected to on the grounds of not cross-examination.)

A. Yes.

Q. How far were you from it?

A. As far as from this to the window leaning over my own door.

Q. And you did not volunteer any information?

A. No.

Q. Was there any family by the name of Sullivan living in Evergreen street at the time?

(Objected to as not cross-examination.)

A. There were Sullivans but nothing to them.

Q. Nothing to whom?
A. Nothing to Peter Sullivan's family.
Q. Well, did you know from the short remark that you overheard this stranger make to Mrs. Dooley that this was John Sullivan from America who was looking for a certain family of Sullivans?

(Objected to on the grounds of not cross-examination and as incompetent.)

A. No.
Q. Then you did not know what Sullivan family was meant?
A. No, because there was two Sullivan families. He was looking for a family in a thatched house.
1282 Q. Did he tell Mrs. Dooley his name?
A. He did not speak any more but went away then.
Q. When did this happen?
A. Last May twelve months.
Q. You did not know whether that stranger was John Sullivan who is now dead or not? Did you?
A. Oh, no.
Q. But you knew him as a young man you say?
A. Yes, a young man at one time.
Q. But you did not recognize him as the young man you had known?
A. No, I did not.
Q. When did Mrs. Dooley die?
A. Last October twelve months, or twelve months this October. I think she is dead two years this October.
Q. How long had she lived in Evergreen street?
A. A good many years; up to twenty years.
Q. Do you know where she lived before that?
A. I do not.
Q. How often were you in Peter's Sullivan's house?
A. Constantly with Ellen.
Q. And all those times you testify that Hannah Callaghan was an inmate of that house? In what capacity?
A. The same as themselves.
Q. Was she in any service or employment?
A. She was not.
Q. Was the Sullivan family a poor family?
A. They were, struggling, struggling people.
1283 Q. Did you know whether or not Mrs. Dooley knew any of Peter Sullivan's family?
A. I do not.
Q. Do you know whether she knew Hannah Callaghan?
A. Oh, she did.

MARGARET CRONIN, a witness for complainants, being duly examined, cautioned and sworn was then examined by Mr. Howe.

Q. Where do you live?
A. Evergreen street.
Q. How old are you?
A. Over sixty, I think.
Q. How long have you lived in Evergreen street?
A. I may say I was born there.
Q. Did you know Peter Sullivan who lived in Evergreen street?
A. I did.
Q. Did you know him when he lived in Crone's lane?
A. No, I did not know him in Crone's lane.
Q. What family did Peter Sullivan have in Evergreen street?
A. He had a daughter Ellen and Bessie and John.
Q. And who else lived with them?
A. Hannah Callaghan.
Q. What was the wife of Peter Sullivan named?
A. Abbe.
Q. Do you know what her maiden name was?
A. Abbe McAuliffe.
Q. Did you know the children of Peter and Abbe Sullivan?
A. I did.
1284 Q. What were their names?
A. Ellen, Bessie and John.
Q. Who was the eldest?
A. Bessie.
Q. Which next?
A. Ellen.
Q. John, then was the youngest?
A. Yes.
Q. Did you ever see John?
A. I see John small, very small, and then I did not see him till he got to a man. I only see him once after coming from sea.
Q. What became of Bessie?
A. I heard she died in the madhouse.
Q. Did she go out and take a situation?
A. Yes, but I had not mixed much with her.
Q. With whom did she have a situation if you know?
A. I could not tell you that.
Q. Did Ellen marry?
A. She did.
Q. To whom was she married?
A. A young man. He was a foreigner called, Manuel Silvia.
Q. What was his business?
A. A sailor.
Q. What became of him?
A. He went away and I think he died in the West Indies; he got fever.

Q. Did Ellen have any children?
A. No.
Q. Or child?
A. No, no child.
Q. What became of John?
A. He went to sea.

Q. How long had you known Hannah Callaghan?
1285 A. Since she was about fourteen, and myself the same age.

Q. What relation, if any, was Hannah Callaghan to Abina Sullivan?
A. She always called her aunt.
Q. Do you know whether Hannah Callaghan was the daughter of a sister of Abbe Sullivan or not?
A. Yes.
Q. After the death of Ellen and Bessie did Hannah Callaghan live with the old man?
A. I think for some time she did.
Q. Do you remember when the old man died?
A. Well, I lived a good distance away from them at that time.
Q. Where did Peter Sullivan work if you know?
A. At Beamish's brewery and I used to see him passing.
Q. You used to see him passing your house?
A. Yes, for his dinner.
Q. Is the Hannah Callaghan who has been giving testimony in this case the same Hannah Callaghan whom you used to know as a girl?
A. Yes, indeed she is.
Q. Was there anything the matter with Peter Sullivan's eye?
A. He was blind of one eye.
Q. Did you ever hear Mrs. Sullivan—that is, Abina—say what relation, if any, Hannah was to her?
1286 A. Well, I used not to speak, but if I passed in the street she would salute me.

Cross-examined by Mr. BLAKE:

Q. Did you know Hannah Callaghan's mother?
A. No.
Q. But you heard she was her mother?
A. Yes.
Q. Did you ever hear that Abbe Sullivan had any other sisters besides Hannah's mother?
A. No; she might have had, but I did not hear.
Q. Did you ever know a man named Humphrey Sullivan?
A. No.
Q. Did you know John Riordan that died in Bandon road nearly twelve months ago?
A. Indeed, I did not: I was far apart from them.

Cross-examined by Mr. DONEGAN:

Q. Did you know Silvia?
A. I did; I see him once.
Q. Now, did I understand you to say that you did not know Peter Sullivan before he came to live in Evergreen street?
A. It was in Evergreen street I knew them.
Q. Does that apply to the others, the members of Peter Sullivan's family?
A. Yes, two daughters and a son.
Q. And you say you knew Silva?
A. Yes.
Q. Do you know when he was married to Ellen?
A. Well, indeed, I do not know when he was married to her.
1287 Q. Do you know when he went away?
A. They were not long married when he went away.
Q. Now, tell me how do you know that Peter Sullivan's wife was Abbe McAuliffe?
A. By hearsay, of course.
Q. Then, is it by reasoning from the fact that you heard Hannah call her "Auntie," that you say her name was McAuliffe?
A. Yes, sure, I never see Mrs. Sullivan till she was married to that man.
Q. Used the people there to call her Abbe McAuliffe?
A. No, Mrs. Sullivan.
Q. Did Hannah call her aunt several times?
A. "Aunt Abbe McAuliffe."
Q. Do you know when Bessie Sullivan died?
A. I could not tell you when she died, but I know she is dead, and she died in the madhouse.
Q. Mrs. Sullivan never told you of this relationship between Hannah Callighan and herself?
A. I never spoke to her, only a passing salute: I was never in their house.
Q. Do you know Crone's lane?
A. Yes, well.
Q. Did you know at any time within your experience of Crone's lane that a number of Sullivans lived in the lane?

(Objected to as not being cross-examination by Mr. Howe.)

A. There was often, but they left it years ago, some of them.
1288 Q. You did not know anything about Abbe Sullivan's brothers or sisters?
A. No, I did not know any of them people, only Mrs. Sullivan, her husband and three children and Hannah Callaghan.
Q. Did you hear that John Sullivan came over here last year?

(Objected to by Mr. Howe as not cross-examination.)

A. I just heard he come, but that is all I heard about him.

Q. Did you hear at the time that he was here?
A. Not until this business cropped up.
Q. Do you know who told you?

(Objected to as not cross-examination by Mr. Howe.)

A. It was said amongst the neighbors that he was there, but that is all I could tell about him.

Cross-examined by Mr. RIDDLE:

Q. How far is your house in Evergreen street from Peter Sullivan's house?
A. I suppose about 50 yards, might be more.
Q. And you live in the same house now that you did then?
A. I live farther down now.
Q. I understood you to say that when Peter died you lived a good distance away?
A. Yes, I did, a good distance down.
Q. What do you mean by that?
A. Well, I mean to say 50 yards is a good distance between two houses to be friendly together.
1289 Q. I believe you said you were never in Peter Sullivan's house?
A. Yes.

(Signatures waived: all parties waive the five days' notice of the examination of the witness, Michael O'Regan, and consent to his examination at this time.)

MICHAEL O'REGAN, a witness called on behalf of complainants, sworn.

(Examined by Mr. HOWE:)

Q. Where do you live?
A. In Cork, at the gate of the Cemetery St. Joseph's, Botanical gardens.
Q. What is your business?
A. I have charge of the place for the last 23 years and more on the 1st of March next, caretaker.
Q. How old are you?
A. I suppose about 64.
Q. Do you know where the grave of Ellen de Silvia is?
A. Yes, I do so far as the tombstone is concerned.
Q. Have you with you a copy of the inscription on that tombstone?
A. I have.
Q. Please produce it?
Q. Did you make this yourself?
A. I did.

Q. I show you a paper marked Complainants' Exhibit "K," and ask you if you copied that from the tombstone of Ellen Silvia in the Botanical gardens?

A. I have done so. The stone is low and I came down on my face and hands.

Q. Is that a copy?

A. It is, a true copy.

1290 (The complainants now offer in evidence Complainants' Exhibit "K." Mr. Riddle objects to the paper on the ground that it is incompetent, irrelevant and immaterial.)

Q. Is that tombstone in the Botanical gardens?

A. It is, part called 6 and 7.

Q. Did you ever open the grave where that tombstone is?

A. No.

Q. Was it ever opened while you were present?

A. There was no one buried in it to my knowledge since I came to the cemetery.

Q. The question I asked you was whether that grave was ever opened in your presence?

A. I believe not; no, I do not remember that it was.

Q. Do you remember my being there?

A. No, I do not.

Q. Did you ever see any coffin plates in that grave?

(Mr. Riddle raises an objection on the grounds last stated.)

A. Yes.

Q. How did you come to see those coffin plates?

A. I got commands from Mr. McCarthy that he had a letter from Mr. Julian to see all such matters; accordingly, I brought them in with me, and I stood there until they dug up the breastplate.

Q. Then you did see the grave open?

A. I saw the grave opened opposite the stone Silvia.

Q. Did you find in that grave the coffin plate of Peter Sullivan?

1291 (Mr. Riddle objects on the same ground as before, and on the additional ground of the leading question.)

Q. What of that coffin plate did you find there?

A. I found Peter Sullivan and Abigail.

Q. Did you say whether you remember seeing me in the cemetery around?

A. I could not say: I may have seen you, but I do not remember.

Q. Do you remember that same grave being reopened within the past two weeks?

A. Yes.

Q. Do you remember whether or not you saw the same two coffin plates?

A. I saw the two because this gentleman (turning to Mr. Wright) was there, and I told him we did not put them down deep because

they may be wanted again; you could take them up if it pleased you.

Q. Did you make a copy of these two coffin plates?
A. I did.
Q. Have you a copy of these breastplates with you?
A. Yes.
Q. Please produce them?
A. All the same I did nothing but take them down. They are correct whatever.

(Exhibit.)

Q. I ask you if the following is a true and correct copy of what appeared on the breastplates to which you have referred:
"Abigail Sullivan, died July 25th, 1872, age 66 years.
" Peter Sullivan, died August 19th, 1875."

1292 Is that a true and correct copy of what appeared on those breastplates?
A. Yes.
Q. What was the condition of the breastplate of Peter Sullivan; good condition or bad?
A. It was in good condition.
Q. Did you have to rub it in order to make out the inscription?
A. Yes, and rub it well, too.
Q. What was the condition of the breastplate of Abigail Sullivan?
A. Good, but the age could not be discerned.
Q. Was the breastplate at all broken in part?
A. In good condition except the age alone of one.

(Complainant offers in evidence the document marked Exhibit "L." Mr. Riddle objects to it on the grounds aforesaid.)

Q. Was there any headstone to Peter Sullivan?
A. One stone for both.
Q. Was his name on the stone?
A. No.
Q. Was Abigail's name on the headstone?
A. No, Ellen Silvia; that is all.
Q. And no one going to that cemetery could find out that Peter and Abigail were buried in the same grave with Ellen Silvia except by opening the grave, could they?
A. Certainly not.

Cross-examined by Mr. BLAKE:

Q. Did you know Peter Sullivan yourself, or any of his family?
A. Not one of them.

1293 Cross-examined by Mr. DONEGAN:

Q. How many times was this grave opened up?
A. Twice.

Q. At whose instance in each case?

A. Mr. McCarthy gave me orders the first time to open it, and secondly, I opened it before the solicitors.

Q. I understand you to say that you got instructions from Mr. McCarthy to open the grave first of all; now, who is Mr. McCarthy?

A. He is the curator of the cemetery.

Q. The second time the grave was opened it was at the instance of the solicitors, by their request?

A. Yes.

Q. When you got up these breastplates did you make the copy that you now put in evidence there and then on the ground?

A. Not the first time, but it was after the gentlemen were up with me.

Q. When did you make the copy of the breastplates?

A. I did at the second visit, and they did not tell me to do so, but I thought to myself it may be required, and I done it.

Q. Well, was it while they were there that you made the copy?

A. No, afterwards.

Q. Then, it was from recollection you made the copy. Did you take the breastplate into the house?

A. No, with a pencil at the grave.

Q. Then, the document which was put in evidence is not a copy taken from the breastplates?

1294 A. Not from the breastplates, but from another copy.

Q. Did you show these breastplates to anybody?

A. No.

Q. You did not find any bones or remains?

A. Only dust.

Q. Is not there a registry kept at that cemetery?

A. There was a very bad record at the cemetery some time ago.

Mrs. O'LEARY, a witness for the complainants, being duly examined, cautioned and sworn, was then examined by Mr. Julian.

Q. Your name?

A. Mary Bridget O'Leary.

Q. Where do you reside?

A. 2 Crone's lane.

Q. Are you a daughter of Mrs. Ellen Davidson, whom we examined last week?

A. Yes.

Q. How long have you been residing in Crone's lane?

A. I was born there.

Q. What is your age now?

A. I suppose I am about 48 or 49.

Q. Did you know Peter Sullivan?

A. Well, I did.

Q. Where was he living when you knew him?

A. Well, I hardly remember them in the lane, but I knew them well in Evergreen street.

Q. Where used he to work?

A. Beamish & Crawford's brewery.

Q. Do you recollect the name of Peter Sullivan's wife?

A. I do, well.

1295 Q. What was it?

A. Abbe.

Q. What family had Peter Sullivan and his wife?

A. Three.

Q. What were their names?

A. Ellen, Bessie and John.

Q. Was there any other person living in the family as a member of the family?

A. Hannah Callaghan.

Q. How long was Hannah Callaghan living with them?

A. As long as ever I can remember her.

Q. What did Bessie Sullivan do?

A. She was in situation with Mrs. Lyons.

Q. Did she continue to reside in that situation up to her death?

A. Until she got out of her mind and went to Bull's asylum.

Q. Did Bessie marry?

A. No.

Q. Do you know whether she is dead or alive?

A. I know she is dead.

Q. Did Ellen remain at home, or did she go out into situation?

A. She remained at home.

Q. Did she marry?

A. Yes, Ellen was married; some man by the name of De Silvia, sailorman.

Q. Did you say that Silvia was a seafaring man?

A. Yes.

Q. Had she any family?

A. No.

Q. Is she dead or alive?

A. She is dead.

1296 Q. Did you know the brother John?

A. No, I never did.

Q. How did you know that they had a brother John?

A. Hearing them talking about him.

Q. Did any of the Sullivan family talk to you about him?

A. No, only that the mother said to a neighbor that there was a letter from John.

Q. Do you recollect whether it was said from what part of the world that letter came?

A. No.

Q. Did I ask you how long Hannah Callaghan lived with the Sullivans?

A. I always remember her to be living with them.

Q. How did she address Mrs. Sullivan?
A. "Aunt Abbe."
Q. Did you know whether there was any relationship between Hannah Callaghan and Ellen and Bessie and John Sullivan?
A. I knew they were first cousins.
Q. How long did Hannah Callaghan continue to live with them?
A. She housekept for them until the old man died.
Q. Do you recollect the death of Mrs. Sullivan, Abina, and of Peter?
A. Yes.
Q. Did either of their daughters die before they did?
A. Ellen died first.
Q. Do you recollect where they were buried?
A. Botanical gardens.
Q. You know that?
A. I do, certainly.

1297 Q. Now, the Hannah Callaghan, who is claiming in this estate, and whom we have examined at Queenstown last week, is that the same Hannah Callaghan who used to call Mrs. Sullivan "Aunt Abbe," and who used to housekeep for Peter Sullivan?
A. Yes.
Q. Who looks after Hannah Callaghan now?
A. I am looking after her now.
Q. Did you get any money from anybody to provide her with necessaries?
A. I got £2 from the Rev. Ca[illegible] Fleming, £1 on Saturday week and £1 last Saturday.
Q. Are you aware that he has a sum of money to dispense in that way on behalf of Hannah Callaghan?
A. Yes.
Q. Did you get any more money from anybody else on behalf of Hannah Callaghan?
A. Yes, £2 to get clothes for her.
Q. Was that shortly before the taking of this evidence was opened.
A. It was the day they went down to the consul in Queenstown, I received £2, and of course I did not get anything that day for Hannah, but we went down as she was.
Q. That was a few days before this day week?
A. Yes.
Q. And that £2 you got from Mr. Wright?
A. Yes.

1298 Cross-examined by Mr. BLAKE:

Q. Did you know Abbe Sullivan's family?
A. Yes, well.
Q. Her sisters?
A. Oh, no; I did not know any member belonging to them.
Q. Did you know any of the rest of the family?

A. No, only the present man's mother, and sisters, their family, but I did not know any of the others.

Q. How much a week is Hannah getting?

A. One pound a week.

Cross-examined by Mr. DONEGAN:

Q. How did Hannah get her black eye?

(Objected to by Mr. Howe as not cross-examination incompetent, irrelevant and immaterial.)

A. She told me the next day she came down to my house that she fell in the hall.

Q. Do you know when she got it?

(Same objection.)

A. The week before last or either the commencement of last week.

Q. Had you got this £2 from Mr. Wright at that time?

A. Certainly not.

Q. Had Hannah got any money from anyone else to your knowledge before that?

A. No, only what I got and what I gave her.

Q. Do you swear that the £2 you got was the first money from Mr. Wright?

1299 A. Certainly not, I told him how badly off Hannah was and he gave me money to give Hannah now and then about six shillings.

Q. Was it 6 shillings at a time or 6 shillings in all?

A. Six shillings, to give 6 pence now and then. I told her of course that I could not give her money.

(Objected to by Mr. Howe as incompetent and not cross-examination.)

Q. Why was it you would only give Hannah a little money at a time?

A. Because I would not give her any more but what she needed.

Q. Are you taking charge of Hannah?

A. Yes, for the past week or fortnight.

Q. Do you think there is any necessity for this?

A. No, only she was desolate. I have no interest in Hannah only that I would like she would do well.

Q. Was Hannah drinking?

(Objected to by Mr. Howe.)

A. She never drank in my place.

(Counsel for complainants protest against the examination of this witness along this line, on the ground that it is incompetent and irrelevant, and they move to tax the cost for so doing against Marie Carrau.)

Q. Do you know whether Hannah got money from Mr. Wright herself?

A. I do not know I never heard Hannah saying it.

1300 Q. And did you say the only money that Hannah has got has gone to her through you except the money from Canon Fleming?

A. Yes, and that was only 6 shillings, now and again.

Cross-examined by Mr. RIDDLE:

Q. Is there any greater necessity for Hannah's being looked after now than there has been before?

(Objected to as incompetent, irrelevant and immaterial.)

A. She did not care for where she was and was very lonely and I thought it was a necessity.

Q. Was it not as necessary to look after her before this matter came up as it is now?

(Same objection.)

A. She was longing to get out of the place where she was. I do not know really; it was only her own wishes that I should look after her.

(The consul adjourned the further taking of evidence until 10 o'clock to-morrow morning.)

NOVEMBER 26TH.

RICHARD WARREN WOLESLEY, examined by Mr. Howe on behalf of complainants.

Q. What is your full name?

A. Richard Warren Wolesley.

Q. Where do you reside?

A. Monkstown, County Cork.

Q. What official position, if any, do you hold?

A. District registrar, probate registry court of the high court of justice in Ireland.

1301 Q. As such official have you in your possession the record of grants of administration and the oaths of persons applying for grants of administration on the estates of deceased persons who were residents within the district register of Cork?

A. Yes, for the last 20 years.

Q. I show you a document marked Complainants' Exhibit "M" and ask you whether it is a true and correct copy of the original oath made by the person whom the document shows made it.

A. Yes.

Q. Have you compared this document marked Exhibit "M" with the original in your possession?

A. Yes.

Q. Is it a true and correct copy?

A. It is.

Q. I hand you a document marked Complainants' Exhibit "N," purporting to be the oath of the administrator in the matter of the case of Ellen Silvia and ask you if you have the original of that in your possession?

A. Yes, I have; it is in the office here.

Q. It is in your official capacity?

A. Yes.

Q. I will ask you if the document marked Complainants' Exhibit "N," has been compared by you with the original?

A. It has.

Q. Is the document marked Exhibit "N" a true and correct copy?

A. It is.

Q. I hand you a document marked Complainants' Exhibit "O," and ask you if you have the original of that document in your custody in your official capacity?

A. No, I have not the grant; I have a copy of it.

1302 Q. A copy of it which is in your custody is the record which your office keeps of the original grant?

A. Yes.

Q. The original grant is delivered to the applicant?

A. Yes.

Q. Is the document handed to you marked Exhibit "O" a true and correct copy of the record in your office?

A. It is.

Q. Have you examined it?

A. I have.

Q. And you know it to be correct?

A. Yes.

Q. I now hand you a document marked Complainants' Exhibit "P" and ask you whether you have a recorded copy of the original grant in your custody in your official capacity.

A. I have, yes.

Q. Have you compared the exhibit just handed to you with the record which is in your office?

A. I have.

Q. Is the document handed to you a true and correct copy of that record?

A. It is.

Q. I now hand you a document marked Complainants' Exhibit "Q" and ask you whether the original of this document is on the file with you in your official capacity?

A. It is.

Q. Have you compared this Exhibit "Q" with that original?

A. I have.

Q. Is this Exhibit "Q" a true and correct copy of the original which is on the file?

A. It is.

(Complainants now offer in evidence the documents marked Complainants' Exhibits "M" to Complainants' Exhibit "Q," both inclusive.)

1303 Cross-examined by Mr. DONEGAN:

Q. A long time has elapsed between the deaths of these two ladies, Ellen Silvia and Bessie Sullivan, and the dates of the issues of the grants: did you, in your capacity as probate registrar, ask the applicants to satisfy you about this delay, to explain it?

A. There are certificates of delay in each case.

Q. Have you those certificates amongst your papers?

A. I have that one; yes, I have them both here.

Q. May I see that? Is this a certificate handed in to you by the solicitors for the applicants accounting for the delay? I will read this.

(Mr. Howe objects to the question of Mr. Donegan as not being cross-examination, and also objects to the reading into the record any instruments as not being the proper mode of proof and also as encumbering the record.)

(Mr. Donegan having regard to the objection that has been made by complainants' attorney states: "I shall not read the document.")

(Mr. Howe now withdraws his objection so that Mr. Donegan can read the instrument in the record.)

"Cork district registry in the case of Ellen Silvia deceased: We hereby certify that the cause of the delay in taking out administration in this case arose from the administrators thinking it scarcely worth while doing so as the estates were so small and his residence being in Seattle, U. S. A.

1304 Dated this 25th day of May, 1900.

WYNNE & WYNNE,
Solicitors, Cork."

Cross-examined by Mr. BLAKE:

Q. I produce, on the part of Kate, Mary and Margaret Riordan, duplicates of the grants of Ellen Silvia and Eliza Sullivan and certified copies of the grants and affidavits already given in evidence by Mr. Howe, and I wish to ask you does the same evidence as you have given to the previous affidavits and grants apply also to these?

A. They do, and which documents have already been attested by the consul.

(Mr. Donegan made application that a witness already examined for the complainants be asked to attend his inquiry again for the purpose of being re-examined and cross-examined—the Rev. Canon Carey, P. P., Carrigaline, is the witness referred to.)

(Mr. Howe answers, that he has no objection to Canon Carey being called by Mr. Donegan, and will waive the five days' notice required.)

Rev. CANON CAREY, called by Mr. Donegan on behalf of Marie Carrau, being duly sworn, was then examined by Mr. Donegan.

Q. Canon Carey, you were already examined in this case?
A. Yes.
Q. Have you got with you here the register of baptism and of marriages from the years 1803?
1305 A. Yes.
Q. Will you produce the books? (Produced.)
Q. Will you turn to the baptismal record for the year 1804?
A. Yes.
Q. Do you find an entry on the 28th of October, 1804?
A. Yes.
Q. Will you read that entry?
A. Twenty-eighth of October, 1804, the entry is "Bridget of Denis McAuliffe, Margaret Murphy, Thomas Punch and Elizabeth Barry."
Q. Now I hand you this document. Is that correct and true?
A. It is.
Q. In every respect?
A. Yes.
Q. And that is taken from the entry which you have in that book which you have just read out?
A. Yes.
Q. I will read this, certificate of exhibit marked "A" on the part of Marie Carrau.

(Objected to by Mr. Howe immaterial. What is the use of reading it into the record?)

Q. Will you now turn to the year 1807 and opposite the date 22d of July tell me what words appear?
A. Honora of Daniel McAuliffe, Margaret Murphy, Cornelius Foote, Mary Murphy.
Q. Now, I hand you this document; is that a certificate given by you extracted from the books which you have been reading from?
A. It is.
Q. Is it true in every particular?
A. Yes.
Q. And that is your name?
A. Yes.
Q. The same applies to the other certificates?

1306 (Exhibit "B.")
(Objected to by Mr. Howe as irrelevant and immaterial.)

Q. Will you now turn to the registrar of the 20th March, 1810?
A. Yes.
Q. Will you read the words that you see opposite that date?
A. "Margaret of Daniel McAuliffe and Margaret Murphy, James Barry and Ellen Mescal."

Q. And is that a correct extract from that register?
A. It is.
Q. That is your name?
A. Yes.

(Exhibit "C.")

Mr. Howe states: "One always has the right to ask the object of the introduction of a document, and I now request counsel for Marie Carrau to state for what purpose the exhibit last referred to is offered in evidence?

Mr. Donegan: "You may have such a right and you can enforce it when you get to the other side of the Atlantic, but at present I refuse to disclose the object."

(Then Mr. Howe objects to the introduction of the document upon the grounds irrelevant and immaterial.)

Q. Canon Carey, have you searched the baptismal register now in your hand carefully, between the dates 1804 and 1820?
A. I have examined the two registers; one follows the other, up to the year 1820.
Q. What was the object in your doing so?
A. To find out the record of Abina, or Abigail, or Abbe,
1307 as the case may be, of the baptism of Abina, Abigail, or Abbe McAuliffe, and of Mary McAuliffe. The name that I was asked for is Abina, but I believe that Abigail or Abbe are all the same. I could find neither of them.
Q. You were also asked to search for a record of the baptism of Mary McAuliffe, and do I understand you to say you could not find that between those years?
A. I could not find it.
Q. Did you write that certificate?
A. I did.
Q. That is written by you and signed by you?
Q. Yes.

(Exhibit "D.")

(This last instrument is objected to by Mr. Howe as incompetent, irrelevant and immaterial.)

Q. On the last day that you were examined here, Canon Carey, you said in your direct examination that you remembered quite well that Edward Corcoran was not born within twelve months of his mother's and father's marriage?
A. According to the record.
Q. You said, from your knowledge of the record, you did not know the man yourself?
A. No; it was from what I saw in the record.
Q. It was not from your own personal knowledge?
A. No.

Q. As a matter of fact, are children always baptized within a few days after the birth?

A. As a rule.

Q. Have you known cases where they were not so baptized?

1308 A. Yes, I have known cases not for ten days or a fortnight, but it is very rare. I only know one case longer than a fortnight.

Q. Do you know the country custom that if the father is away, they wait till he comes back?

(Objected to by Mr. Howe as incompetent and irrelevant.)

A. I would not say it is a custom. It sometimes happens.

Mr. DONEGAN: I now formally put in these exhibits on behalf of Marie Carrau.

(To which Mr. Howe objects on the grounds irrelevant, incompetent and immaterial.)

Cross-examined by Mr. HOWE:

Q. Canon, I believe you said that the records of the parish prior to 1809 were in many respects incorrect, in that there were many omissions?

A. Yes, I did say so, and I say that there were some omissions.

Q. Please explain how the data for preparing these registers was obtained, if you know.

A. Well, I could not exactly with certainty how they were, but I take it for granted that the omissions might have occurred in this way, that priests in those times were few in this country, and had large districts in their charge, and, owing to many other impediments and obstacles to the exercise of the functions of religion, under these circumstsnces, the priests used to perform bap-

1309 tisms only at the house of the parents and where the children were born, and it is very probable that, though they take an entry for the purpose of recording it in the district, they may put that in a memorandum, or piece of paper, or something, and forget to make the entry.

(Mr. Donegan moves, on behalf of Marie Carrau, to strike out this answer.)

A. It is said at the head of this old register, that I have in my custody, by the parish priest who succeeded the person who performed these baptisms, that he has registered these as baptisms found by him among the papers of his predecessors.

Q. Can you turn to that register and show that entry you have just referred to?

A. Yes. Here it is: "The following is an exact account of the baptisms which the Rev. John Horgan found registered on his appointment to the Union of Carrigaline and Templebrady." There

is here at the end of that old register: "The following are baptisms which I found irregularly registered. John Horgan."

Q. Occurring within the same period of time in which the supposed-to-be records are made, so that from that it is evident that this other register could not be relied on as being complete. Say that date is 1803 and 1805, that comes down to October 26th, 1806?

A. Yes.

1310 Q. Now, Canon, have you examined the registers of your parish from the earliest date for the purpose of ascertaining whether or not the name of McAuliffe was a common name in Carrigaline?

A. Well, I could not say that I examined it for that purpose, but at the same time I had the curiosity to observe it.

Q. What was the result of your examination?

A. Well, I found the name "McAuliffe" here and there in perhaps five or six places, in addition to those of which I have given certificates or records.

Q. Is it, then, or not, a common name in Carragiline?

A. At present it is not, nor do I think it was a common name at that time.

Q. In giving your certificates to Mr. Donegan did you give two certificates which showed that in one case Margaret Murphy was married to Denis McAuliffe, and in the other, that Margaret Murphy was married to Daniel McAuliffe?

A. Yes, I did.

Q. Did you give more than one certificate showing the birth of children to Daniel McAuliffe and Margaret Murphy?

A. I forget about the children of Daniel. I gave two certificates to that effect.

Q. That was Honora and Bridget?

A. Yes. Honora was one, at any rate. Margaret one and Denis.

1311 Q. From your examination of the registers in which you have testified, did you, or did you not, conclude that the name of Denis instead of Daniel McAuliffe, as the husband of Margaret Murphy, was correctly or incorrectly entered?

(Objected to by Mr. Donegan on behalf of Marie Carrau on the grounds that the answer can only be an opinion and is not evidence.)

A. It is my opinion, and I give you my reason for forming that opinion, that the name "Denis" must have been put down by mistake for "Daniel." I come to that conclusion from the fact that I find Margaret Murphy recorded as the wife of Daniel McAuliffe in two other places, and because from my own experience I have found similar mistakes made in other places.

Q. The other cases you refer to are they in the register?

A. I am sure they are, but I did not speak of what I found in this register, but more from general experience, and I found that a curate, perhaps, would make a mistake.

Q. Is it, or is it not, a common thing that such mistakes should be made?

A. I would not say it is a common thing; it is rather a rare thing.

Q. Do you find on the registers, from which you have testified, any two Margaret Murphys about the same date?

A. I could not say, except those that I have mentioned already; Margaret Murphy, as the mother of three children, for whose
1312 baptisms I have given certificates. I cannot remember any other case; it may be, but I cannot remember it.

Q. The fact that you find a Margaret Murphy given as the mother of three McAuliffe children to fall within such dates as would tend to show her the mother of the children, leads you to suppose that the Margaret Murphy married to Daniel McAuliffe is the same Margaret Murphy who is put down as the wife of Denis McAuliffe, and that "Denis" was in mistake for "Daniel."

(Mr. Donegan objects on the grounds that the question is a leading question, and that the answer is contained in the question.)

A. That is my opinion; I can't say any more about it.

Q. Canon, I ask you to look at the baptismal register for as late as the year 1851, and see whether there are not corrections made in the names of parties baptized. Take any page.

A. I see that in two pages. I did not look carefully into that hitherto. The pages are not numbered until the year 1851; on the 9th of November, 1851, another correction appears to be made.

Q. Just look through the book and see whether you do not find numerous corrections in names?

A. Yes; I did not pay much attention to them.

Q. Canon Carey, since you have been on the witness-stand to-day have you not examined a register to ascertain whether there are not a large number of corrections appearing in it?

1313 A. I do not like to say a large number.

Q. Have you not seen at least fifteen corrections?

A. Well, I would not say more than a dozen.

Q. I now ask you to turn to the date of the 28th August, 1839, certificate of baptism.

A. Yes.

Q. Do you find the name "Mary, of John Corcoran, Margaret McAuliffe"?

A. Yes.

Q. I hand you an Exhibit "R" and ask if you prepared it?

A. Yes, I did.

Q. Is that a true and correct extract of the register which you hold in your hand?

A. Yes.

Q. That is the original register, is it, that you hold in your hand?

A. Yes.

Q. I hand you an Exhibit "S" and ask you to refer to the date, 23d April, 1842.

A. Yes.

Q. Do you find this on the baptism of John the son of John Corcoran and Margaret McAuliffe?

A. Yes.

Q. Please look at Exhibit "S" and state if you prepared it?

A. Yes, I prepared that.

Q. Is that a true and correct extract from the register which you hold in your hand?

A. It is.

Q. Please look at the register of date 15th of June, 1849. Do you find "Denis, the son of John Corcoran and Margaret McAuliffe." Please look at Exhibit "T" and state whether you prepared it?

A. I prepared this.

Q. Is it a true and correct extract from the register which you hold in your hand?

A. It is.

1314 Q. Please look at the date 4th of September, 1844; do you find "Margaret, of John Corcoran, and Margaret McAuliffe"? Please look at Exhibit "U" and state whether you prepared it.

A. Yes, I prepared it.

Q. Is that a true and correct extract of the register which you hold in your hand?

A. It is.

Q. I call your attention to the year 1828, for the month of May, and ask you whether you do not see that there is a correction made in the second line of the register?

A. Yes, there is. It appears an attempt to write a different name to what ought to have been—a mistake.

Q. I call your attention to the month of February, 1829, and ask you whether there is not a correction there?

A. Yes, there is.

Q. I call your attention to September, 1830, and ask you whether there are not two corrections under date of the 22d in the names of parties?

A. There are two corrections. You may call it corrections.

Q. I call your attention to December, 1830, and ask you if the name "Margaret" has not been changed to "Mary"?

A. Yes.

Q. I call your attention to June, 1831, and ask you if there is not a correction there?

A. Yes, there is.

Q. I call your attention to July, 1831, and ask you if there is a correction there?

A. There is.

1315 Q. I call your attention to October, 1832, and ask you is there not a correction?

A. Yes.

Q. I call your attention to May '33, and ask you if the name has not been changed?

A. Yes.

Q. To March, 1833, and ask you if there is not a change of "Thomas" to "Pat"?

A. Yes.

Q. I call your attention to December, 1833, and ask you if there has not been a change in date?

A. Yes, in the date.

Q. I call your attention to September, 1834, and ask you to read the entry at the foot of the page?

A. Yes, that is one of those that I noticed on former occasions, when I referred first. This Honora is by mistake for (whatever the name is, I cannot make out), whom they called Anna, or Ann. I knew that person myself, and that is one of the cases that I say that I saw a few instances of it.

Q. I call your attention to January, '36, and ask you if the name has not been changed?

A. Yes.

Q. July, 1836, has the name been changed?

A. Yes.

Q. August, 1836, has the name been changed?

A. Yes.

Q. December, 1836, has the name been changed?

A. Yes.

Q. April, 1837, has the name been changed?

A. Yes.

Q. February, 1838. Has the name been changed?

A. Yes.

1316 Q. March, 1838. Has the name*d* been changed?

A. Yes.

Q. April, 1838. Has the name been changed?

A. Yes.

Q. I call your attention to January and February, 1839. Has not that whole page been crossed out?

A. Yes.

Q. How many entries are there on that page which has been crossed out?

A. There are nineteen at all events.

Q. On that one page?

A. Yes.

Q. I call your attention to January, '39. Has the name been changed?

A. Yes.

Q. September, '39. Has the name been changed?

A. Yes.

Q. January, '40. Has the name been changed?

A. Yes.

Q. August, '40. Has the name been changed?

A. Yes.

Q. Now, is not that a fair sample of the way in which the register

has been kept under the hard conditions which existed at the time the register was kept?

A. Up to that time I think it is.

Q. Now, Canon, I understand you to say that prior to 1809, the register was not considered strictly correct, owing to the impediments and obstacles which existed in regard to the exercise of the Roman Catholic religion. Is that correct?

A. It is.

Q. What are those obstacles? Explain fully the obstacles and impediments that the people laboured under.

1317 A. Well, in the first place, they had not sufficient priests, or at least not the number that they have at present, and in most instances there was only one priest having charge of large and populous districts.

Q. Were there not pains and penalties for the exercise of the Roman Catholic religion at that time?

A. Well, not that would interfere with the records of the register of marriages and baptisms, except in the case of marriages between Catholics and non-Catholics.

Q. When was the Catholic emancipation act passed?

A. In the year 1829.

Q. 1829? Prior to that date did not Roman Catholics in Ireland labour under great disadvantages in the exercise of their religion?

A. Well, yes, but I wish to confine my evidence now to the record of baptisms and marriages, which I think is only pertinent.

Q. I now ask your attention to the older register, which you have produced, and call your attention to the date "November, 1803." Do you not find one line scratched out?

A. Yes.

Q. Do you not find on the next line a change of names?

A. Yes.

Q. I call your attention to January, 1808, under the date of the third. Do you not find a change in name?

A. Yes.

Q. I call your attention to March of the same year, and ask you if you do not find a change of name?

A. Yes.

1318 Q. I call your attention to August, and ask if you do not find a change of name?

A. Yes.

Q. I call your attention to August of the year 1812, and ask you whether it is not apparent that some name has been scratched out and rewritten?

A. It looked like it.

Q. I call your attention to November of the same year, and ask you whether Margaret has not been changed to "May"?

A. Yes.

Q. I call your attention to September 4th, and ask you whether

it is not apparent that some names have been erased, and other names inserted?

A. Some change has been made.

Q. What is the year please?

A. 1813.

Q. And the same is true of August the 29th of the same year, is it not?

A. Yes. They appear as if they were a hair-in-the-pen.

Q. I call your attention to January 1814, and ask you if the name "Mary" has not been changed to "Ellen"?

A. Yes.

Q. I call your attention to June, 1815, and ask you if the name has not been changed to "Catherine"?

A. Yes.

Q. I call your attention to July of the same year, and ask you if the name "Mary" has not been interlined.

A. Yes.

Q. I call your attention to June for the year 1816, and ask
1319 you whether all the names under date of 23d and 27th have not been scratcher out by a pen running through them?

A. Yes.

Q. The writing in this register up to July, 1816 is in another handwriting, is it not?

A. Yes.

Q. And appears to have been done all at the same time?

A. Not all at the same time.

Q. I mean from the colour of the ink does it not appear that those entries were probably transcribed?

A. No. I do not say they were transcribed, nor do I mean to say they were not transcribed from a memorandum according as the baptisms performed, and then these transcribed into the register regularly. But here you see there is a heading there that gives an explanation of what happened here; you may mind this was a neighboring priest who took up the duties of the parish priest who was then in delicate health.

Q. The succeeding portion of the register after July '16 is in different handwriting?

A. Yes.

(Complainants now offering in evidence the documents marked as follows: "R," "S," "T," "U," both inclusive.)

Cross-examined by Mr. BLAKE:

Q. Canon Carey, who asked you to get the birth certificate of Abbe McAuliffe?

A. Mr. Wright asked me in the first instance.

Cross-examined by Mr. RIDDLE:

Q. Canon Carey, would not these corrections in these reg-
1320 isters indicate the exercise of great care and the intention on the part of the priests keeping them to make them correct and reliable?

(Objection to by Mr. Howe on the ground that Mr. Riddle has filed the disclaimer in this suit, has appeared here stating at all times that he was representing the administrator only, and that he was not representing Miss Carrau. This witness is produced by Miss Carrau for the purpose of attempting to defeat the claim of Hannah Callaghan and Edward Corcoran, and Mr. Riddle under the guise of a cross-examination is attempting to aid and assist Miss Carrau in her defense against the claims of these complainants.

(Mr. Riddle denies any such intention or the appearance under any guise whatsoever, except as he said originally at the opening of this testimony, and he characterizes the statement as false. He claims the right to cross-examine any witness produced by any party in an attempt to represent and ascertain the truth and that alone, and he claims further in endeavoring to ascertain the facts of the truth, to represent the administrator of the estate solely. Mr. Howe is quite content to let the record in this case speak for the correctness of his position, but he is unable to understand how the party who has filed a disclaimer and who has expressly waived proof of the allegations of complainants' bill, is entitled to cross-examine witnesses.)

Mr. RIDDLE again: "For information, I desire to refer Mr. Howe to the order of the court, who issued this commission, and the
1321 order of the probate court, directing the administrator to be present at the taking of this testimony, and also to the stipulation signed by counsel for the administrator before proceeding to Ireland under the order granting the commission."

Cross-examined by Mr. DONEGAN:

Q. Canon Carey, will you turn to 1804? First of all, will you turn to the note that you say is made by Father Horgan? Will you let me see that?

A. Yes.

Q. You see the words appearing here: "The following baptisms which I found irregularly registered, John Horgan."

A. Yes.

Q. Do you see the names of the children that were baptized following in that list?

A. Yes.

Q. Would you count the number of lines? I presume each line to represent each line a child?

A. Thirteen.

Q. Does the name "Bridget McAuliffe" appear there?
A. No.
Q. Will you turn to the entry again of the 28th October 1804?
A. Yes.
Q. Is there any alteration, or correction, or interlineation there?
A. No.
Q. Now, Canon, will you turn again to this note of John Horgan? What years are dealt with there?
A. First, on the page here is the year 1805; second, same year, the third is the year 1804, and fourth, fifth, seventh, eight and nine, all in the same year, 1804.
—. And then the next is in the year 1806, and the two following, in the same year book with date there, 1809 there is no entry
1322 between that and the entry of 1809?
A. Not on that page.
Q. In November of 1809, this fresh register begins?
A. Yes.
Q. These entries here have relation to omissions that took place in the few pages that precede those in earlier years?
A. Yes. Between 1804; a few in 1803.
Q. Between 1803 and October, 1809, these are the omissions that the Rev. John Horgan states he found?

(Objected to as incompetent by Mr. Howe.)

A. Yes, they are omissions which he states he found.
Q. Does he state anywhere else in that register that he found any other omissions between those dates?
A. I do not think so—in the register of baptisms, at all events.
Q. As far as your search goes through this book that I now hold, have you found any other omissions referred to by the Rev. John Horgan as between those dates? I do not want to take you over any other dates. I want to know whether there is any other similar note in the book?
A. No omissions or any irregularities, except as to baptisms.
Q. Well, now, Canon, would not that entry there suggest to you that the Rev. John Horgan corrected by that entry, some omissions that existed?

(Objected to by Mr. Howe as incompetent.)

A. Yes.
1323 Q. And did that also suggest to your mind that the Rev. Canon Horgan was a person who took care to keep this record in order?

(Objected to by Mr. Howe on the same ground.)

A. Yes.
Q. Is there anything November, 1803? Will you turn to the alteration that you said existed in a line there?
A. On what date, Mr. Donegan?

Q. November, 1803, is the date that Mr. Howe referred you to, a line in that year somewhere.

A. Yes, the 27th November.

Q. Would you let me see that? Is there anything to suggest to you that those alterations were not made at the same — that the entries were made?

A. There is not.

Q. And would that answer govern all the instances that were referred to, that you were asked to refer to by Mr. Howe in that book?

A. I could safely make the same answer, but it may be otherwise.

Q. Would you turn to November of 1809. Did you on the last day that you were examined here state in your direct examination that the book was regularly kept as from that date and irregularly before that?

(Objected to by Mr. Howe.)

A. I believe so.

Q. Was there anything in the year 1809 to fix in your mind— was there anything to indicate that they were irregularly
1321 kept before that, and after that, taking 1809 as a landmark to you, there was nothing unsettled in the times, nothing in relation to the Catholic church in 1809 that would make you say that they were irregularly kept before that date and regularly after?

A. Not that I know except the death of the old parish priest and the appointment of the new parish priest.

Q. And that coupled with the fact that you see those words written there by Father Hogan; was he the incoming priest?

A. I believe so.

Q. Are there any reasons for believing that the register was incorrectly kept before that?

A. Well, I do not like to answer that question and my reason for having hesitation about it is, I fear that it might be throwing some slur upon the old man who officiated there. He was old and he may be forgetful; he may — overpowered with work and labour and might have omitted the entry of the baptisms.

Q. In 1809, the Rev. Father Horgan, was not he the incoming priest then?

A. He was.

Q. And did not he make those corrections that you see there?

A. It appears to me from the entry in this book that it was Father Horgan who wrote it out, transcribing that from the books or papers of his predecessor.

Q. Do I understand you to say that in your opinion, this book, this part here, was written by the Rev. Father Horgan; it was written by him, was this your opinion?

1325 A. Yes.

Q. Was there any other book in existence?

A. Oh, no; he, Fr. Horgan, had this made out. "The following

is an exact account of the baptisms which the Rev. John Horgan found registered on his appointment to the union of Carrigaline and Templebrady. "January 1803. Baptized by Rev. John Callaghan up to 1809." This is heading the register, and this register then goes on to October 1809.

Q. Then there are some other registers which he states he found among his papers?

A. They are irregularly registered. From this last I would infer that the register was not consecutively made by Fr. Callaghinan.

Q. That is the old book?

A. Yes.

(Objected to by Mr. Howe as incompetent, irrelevant and leading.)

Q. From the fact that these entries are made here by the Rev. John Horgan and that this writing appears here stating that these following are correct: "The following is an exact account of the baptisms which the Rev. John Horgan found registered on his appointment to the union of Carrigaline and Templebrady January, 1803," from the fact that those words appear here and that those entries follow and that those omissions are supplied here also by the Rev. John Horgan, would you infer that the Rev. John Horgan kept these registers regularly?

1326 (Objected to by Mr. Howe on the ground that it is leading, that it is a testimony of counsel and not the witness, and that it is irrelevant, incompetent and immaterial.)

A. Yes.

Q. Would you judge that the Rev. Fr. Horgan was a careful priest from those entries?

(Same objection by Mr. Howe.)

A. I have some reason to think so at any rate.

Q. Now, Canon, beyond the fact that Margaret Murphy was the mother of Bridget McAuliffe and of Honora McAuliffe and of Margaret McAuliffe, have you any other reason for believing that the name Denis appearing in that register there as the father of Bridget was wrong and incorrect?

(Objected to by Mr. Howe as leading.)

A. I have the fact that such a mistake sometimes did happen at other times.

Q. But have you ever discovered any mistake in that portion of the register corrected by the Rev. John Horgan?

A. I could not say by whom the corrections are made. There are corrections made but I could not say by whom.

Q. Have you ever, from your knowledge of the district, discovered any mistake in that portion of the register?

A. You mean that early period? I do not recollect.

Q. Were you ever asked to find how many Margaret Murphys there were in your register?

1327 A. No, I do not think I was.

Q. By any of the solicitors engaged in these proceedings?

A. I do not think I was asked that question.

Q. And you could not say now whether there were many Margaret Murphys or not?

A. Oh, I think I may safely say that Murphy is a common name.

Q. And is not Margaret Murphy a common name?

A. Well, I may say that Margaret Murphy occurs very often, too.

Q. Is there anything peculiar in a Denis McAuliffe marrying a Margaret Murphy?

A. I do not see it.

Q. Nothing peculiar in that. Until you were asked to supply these certificates, Canon, did it ever occur to you that this was a mistake, this Denis and Daniel?

A. Certainly not, as it did not come under my notice until I was asked to find the register of the baptism of this Bridget and Margaret and the other members of the McAuliffe family.

Q. You were referred to certain corrections that appeared in the year 1829, would you just let me see that; one or two will be sufficient. Will you show me the alteration that Mr. Howe referred you to?

A. Yes.

Q. There is one now, with regard to that, does it not appear to you that that is written by the same person?

A. I would say that.

1328 Q. And is there anything to suggest from that writing, that you have, by the same person that it was not written at the same time?

A. Nothing to show to the contrary; it may or may not.

Cross-examined by Mr. HOWE:

Q. Canon, I hand you a paper marked Complainants' Exhibit "V," and ask you if that is in your handwriting and whether it is true and correct?

A. I have given that paper and I believe that statement to be true.

We now offer in evidence Complainants' Exhibit "V."

Mr. ROBERT GREGG, a witness on behalf of complainants, being duly examined, cautioned and sworn, was then examined by Mr. Howe:

Q. What is your name?

A. Robert Gregg.

Q. How old are you?

A. I am very close to 81.

Q. Where do you live?

A. I live a little out of town. My office is at number 67 South Mall in the city.

Q. What is your profession, or what has been your profession?

A. Has been a solicitor.

Q. When did you retire?

A. 1896.

Q. I hand you a paper marked Exhibit "W" and ask you if you received that letter in the ordinary course of the mail?

A. Yes, I received that letter.

1329 Q. Purporting to be signed by John Sullivan?

A. Yes.

Q. I ask you if in response to the letter marked Exhibit "W," you wrote and had mailed the document which I now hand you marked Exhibit "X"?

A. Yes. That is my handwriting. It is all in my handwriting and signed by me.

(Complainants now offer in evidence these papers marked "W" and "X." Objected to by Mr. Riddle as incompetent, irrelevant and immaterial.)

(Mr. Donegan rises to cross-examine but says there is no necessity to ask anything.)

(The consul adjourned the further taking of evidence until 10 o'clock to-morrow morning.)

NOVEMBER 27TH.

The Rev. Canon JAMES FLEMING, parish priest of the Western Parish of St. Finn Barr's, a witness for complainants, being duly examined, cautioned and sworn, was then examined by Mr. Julian.

Q. You are the Rev. Canon James Fleming?

A. Yes.

Q. You are the parish priest of the Western parish of St. Finn Barr's?

A. Yes.

Q. How long have you been parish priest of the Western parish?

A. Eleven years.

Q. Prior to that was the parish of St. Finn Barr's, Western and Eastern, one parish?

A. Yes.

1330 Q. And on its division were you the first parish priest appointed to the Western parish?

A. Yes.

Q. Prior to the division of the parish into two where were you one of the Roman Catholic curates?

A. In St. Finn Barr's prior to the division.

Q. How long were you one of the curates of St. Finn Barr's parish?

A. Nineteen years.
Q. That was prior to the division?
A. Yes.
Q. As one of the curates of St. Finn Barr's parish, had you in your capacity as curate to come in contact with some of the witnesses we have produced here? Just look along that list and say with whom you came in contact.
A. With the whole of them, but of course after 11 years when a name is put before me, of Denis Murphy for example, there are so many Denis Murphys that I cannot identify them, but if they were brought before me I might identify them.

(Mr. Donegan objects to the witness being handed a document unless it is sought to put that document in evidence.)

A. (Con:) The persons I know on that list very well—Ellen Davidson, Mary Davidson, I know those two people for over 30 years and I believe them to be worthy of credence.
Q. Do you know Elizabeth Cowie?
A. I have a slight knowledge of her and from inquiries I have made I believe she is worthy of credence also.

1331 (Mr. Donegan objects to this as incompetent, irrelevant and immaterial.)

Q. Bridget Cronin, of 12 Abbey street, do you know her?
A. I know her by appearance, but of course not being out of the parish for 11 years I cannot bring her to memory, but I recollect the Davidsons very well.
Q. In the entering of baptisms of Roman Catholic children in the register, who enters these?
A. The celebrant; the officiating clergyman.
Q. Does he make the entire entry?
A. As a rule.
Q. Do the sponsors write their names in the register?
A. Oh, never.
Q. The prefix "O" to a name, is it common for members of the same family to drop this and others to use it?
A. Yes it is common. I know an instance in my own family of the bishop of Cork, who was a cousin of mine.
Q. Does he use or drop the "O"?
A. The father dropped the "O," while the bishop himself kept the "O."
Q. What is the name of the bishop?
A. O'Callaghan.
Q. Do you know that Hannah Callaghan has been a British subject always?
A. I believe so; I do not think she was ever out of Cork; I think she was scarcely ever out of the South parish.

(Mr. Donegan asks Mr. Julian to put in the document
1332 and requests that it be marked for reference by the consul.)

Cross-examined by Mr. BLAKE:

Q. Do you know Fort street?
A. I do well.
Q. Is that St. Finn Barr's east or west?
A. St. Finn Barr's east.
Q. Then you are not parish priest of that portion?
A. No.

Cross-examined by Mr. DONEGAN:

Q. Canon Fleming, a document was put into your hand by Mr. Julian containing a number of names, Hannah Callaghan, Ellen Davidson, Eliza Cowie, Catherine Murphy, Denis Riordan, Mary B. Davidson, Norah O'Connell, Denis Murphy, Norah Kiely, Mary Jenkins, Daniel Burke, Margaret Cronin, Bridget Cronin, Denis McCarthy, Michael O'Regan, John Hillyard, Catherine Riordan, Margaret Magrath, and Mary Riordan, that list was placed in your hands by Mr. Julian?

A. Yes.

Q. And you were asked to read that list and say if the persons whose names appear thereon were worthy of credence?

—. Mr. Julian did not ask that question; it came in in the answer.

Q. Would you tell me what the meaning of the words "By dispensation" is in a certificate of marriage?

A. A dispensation is a relaxation of the canonical laws of the Roman Catholic church.

1533 Q. In what cases would a dispensation be given?

(Objected to by Mr. Howe on the grounds of no cross-examination.)

A. A multitude of cases.

Q. Would the use of the words "By dispensation" in a register suggest to you, looking over that register, that there was any difference in religion between the parties?

(Objected to by Mr. Howe as not cross-examination and as leading.)

A. You ask me a question, if it be a matrimonial case there might be a dispensation for 18 different impediments; fourteen of these may be detriment impediments and four of them impedient.

Q. By dispensation there is nothing to suggest how that dispensation came, whether by the priest, would the priest have power to object?

(Objected to by Mr. Howe as not cross-examination and as leading and immaterial.)

A. No. I might say of course for your information that a dispensation is always entered on the register by order of the bishop.

Q. In modern times?

A. Yes, and by order of the bishop also a copy of the dispensation is kept.

Q. You say in modern times, how long ago for instance?

A. Since '51, I think it was the Synod of Thurles in '51.

1334 Of course owing to the circumstances of this country ecclesiastical discipline would not be fully observed and in or about the year '51 the Synod of Thurles was held which restored ecclesiastical discipline in this country. I might say that I am speaking now from memory about the date '51.

Q. Does the celebrant in baptism always make the entry in register?

A. Always.

Q. And I suppose that prevails in Cork?

A. That is the general rule.

Q. The celebrant of the baptism makes the entry?

A. As a rule; there might be cases where it would be done by the clerk.

Q. The celebrant of course would be the priest?

A. Yes.

(The counsel for complainants now announced that with the exception of one witness, whom they will determine whether they will examine to-day or not, and with the further exception that they may examine Fr. Leonard as to one certificate which has been introduced in evidence, and also that they may introduce a photographer, they will now rest the case so far as Cork witnesses are concerned.)

Mr. DONEGAN: Having been served with a notice by Messrs. Pyles, Donworth and Howe, of their intention to call a number of witnesses in which the names E. F. Collins, Cork, James Mooney, Cork, and —— McCarthy, Cork, appear, I am surprised at your bringing your evidence to a conclusion without examining

1335 these witnesses, and therefore reserve the right to call any of them that I may think fit at a later date in the enquiry.

Mr. HOWE: Will you indicate when you will call these witnesses?

Mr. DONEGAN: I will they are your witnesses up to the present, you have abandoned certain witnesses.

Mr. JULIAN: No.

Mr. DONEGAN: You were not here when Mr. Howe said you did not wish to examine any other witnesses. Your list contains other witnesses.

Mr. HOWE: You served us with a notice of producing witnesses this morning and I hope you have them here. Mr. Julian says you served a notice of Mr. Caves appearing this morning.

Mr. DONEGAN: No, Mr. Julian said if we had him here this morning he would be examined; I cannot have him here until the afternoon as he is engaged with his board.

Mr. HOWE: Counsel for complainants conduct this case according

to their own views and they reserve such witnesses for examination in rebuttal of such evidence, if any, as the defendants may produce.

Mr. BLAKE: Also reserves the right to examine the witnesses of the complainants.

Mr. CAVE, a witness on behalf of Marie Carrau, being duly cautioned and sworn, was then examined by Mr. Donegan.

Q. What is your name?

1336 A. Henry Carr Cave.

Q. What is your profession?

A. Secretary and agent.

Q. Of any establishment?

A. Secretary of the Cork savings bank.

Q. How many years have you held that office?

A. Nearly 16 years.

Q. How long have you been connected with the bank as an official?

A. Over 54 years.

Q. Are you aware that a person by the name of Ellen Silvia had an account in your bank prior to 1871?

A. Yes, I think it was before '71.

Q. Are you aware that a woman by the name of Bessie or Elizabeth, Sullivan had an account in your bank prior to 1886?

A. Yes.

Q. Did you know these people?

A. Of course I see so many faces I do not know that I could say I knew them. I would not say I knew Ellen Silvia.

Q. Did these people make lodgments in the bank?

A. They did.

Q. Do you know if these women are dead?

A. Yes.

Q. Do you know when they died?

A. I could not give the date, but of course the administration to them would prove when they did die.

Q. Was administration taken out by some person to both of these women?

A. Yes.

1337 Q. Do you know that the account, the last lodgment, was made in the case of Ellen Silvia, prior to '71?

A. I could not answer that question now. I did not know that you would ask those questions or I would have brought particulars.

Q. Have you an entry in your books of the last lodgment?

A. Yes.

Q. Was it in or about the year '71?

A. I could not answer that.

Q. Have you had a sum of money to the credit of these two accounts on your hands unclaimed for a number of years?

A. Yes. Of course I think it is only right to say of course we did not look on Bessie Sullivan's account as unclaimed but Ellen Silvia, we did not think there was any such person, and the reason of Bessie Sullivan was because Mr. Lyons, who had her affairs in hands when he was in Cork, told us she had (Mr. HOWE: We object to what Mr. Lyons told) a brother in America.

Q. Now did any persons other than the administrator apply to you for this money, the money to the credit of both accounts?

(Objected to by Mr. Howe as immaterial.)

A. No.

Q. And this money lay to the credit of these accounts all these years?

A. Yes.

Q. When you say you did not know there was such a person as Ellen Silvia what do you mean exactly?

A. It went like amongst the unclaimed accounts.

1338 Q. You say no person ever applied to you before the administrator for these funds?

A. No.

Q. Any relatives or any people claiming about the account?

A. No.

Q. Did anybody ask you about the accounts?

(Objected to by Mr. Howe as leading.)

A. Mr. Sullivan from America and some solicitor from Dublin, Mr. Collins.

A. (Con.:) In some of these cases two or three attorneys apply about accounts; now, for instance, this very day I have had two letters about one account.

Q. But what I want to get clearly from you is this, did you ever get a letter from any attorney acting on behalf of any person than John Sullivan?

A. No.

Q. That is all I have to ask you.

Cross-examined by Mr. HOWE:

Q. Mr. Cave, the balance of both accounts which you have mentioned was finally paid over to John Sullivan of Seattle in America, was it not, through his solicitor?

A. Yes.

Q. He was the administrator?

A. Yes.

Q. Prior to the grant of administration had you received a letter from John Sullivan of Seattle or anybody else, with reference to either of these accounts?

A. I had of Bessie Sullivan. I would not be certain about Ellen Silvia.

Q. How many years before he took out administration?

1339 A. If I knew the date of the administration I could give a guess, but it was in '96 or '97. I do not know whether you have the dates of my letters that I gave you, because that might put me back; I may be wrong. I gave you some dates, Mr. Howe.

Q. Did you write to John Sullivan of Seattle, Washington, in reference to the estate of Bessie Sullivan?

A. Yes.

Q. Have you your letter book with you?

A. No, sir.

Q. After you wrote to Mr. Sullivan in reference to the matter he took out administration on the estate?

A. He did.

Q. That was several years afterwards?

A. Yes.

Q. Having been told by Mr. Lyons that there was a brother of the Sullivan girls in America, would there have been any use in anyone else applying for that money; would the bank have paid it?

A. Not without administration.

Q. Now, Mr. Cave, Bessie Sullivan was in the asylum, was she not?

A. Yes.

Q. Money was being drawn by an arrangement with the bank and Mr. Lyons for her maintenance, was it not?

A. I do not know that you would put it in that way, because we have a rule in the bank when people are imbecile that their maintenance will be paid out of the book.

1340 Q. Were advances made pursuant to that rule for the support of Bessie Sullivan?

A. I think every quarter regularly.

Q. Having regard, now, to the fact that Mr. Lyons told the bank that Bessie Sullivan had a brother in America, did the bank ever regard Bessie's account as derelict or unclaimed?

A. No.

Re-examined by Mr. DONEGAN:

Q. The account of Ellen Silvia, do you know whether she died a number of years prior to Bessie?

A. What I can recollect of the administration she did a great number of years. I can only take the date of her death from the administration.

Q. Did you regard her account as derelict.

A. I looked on it that there was no such person.

Cross-examined by Mr. HOWE:

Q. You did not know whether Ellen Silvia existed or not except from the bank books, did you?

A. No.

That is all.

Mrs. BAGLEY, a witness called in behalf of the Riordans, and examined by Mr. Blake in their behalf.

Mrs. BAGLEY: I know nothing.

Q. What is your name?

A. Ellen Bagley.

Q. Where do you reside?

A. In Goold street.

Q. What number?

A. 46.

Q. What is your occupation?

1341 A. A widow woman living with a son-in-law since my husband died.

Q. How old are you?

A. Well, I suppose I am 75 years.

Q. Did you know Abbe McAuliffe, who was married to Peter Sullivan?

A. Yes, I did.

Q. Did you know her sister, Mary McAuliffe?

A. It was Mary McAuliffe I knew, who was married to Humphrey Sullivan.

Q. Had he any children?

A. He had two sons and one daughter.

Q. What was the daughter's name?

A. Margaret.

Q. What were the sons' names?

A. Johnnie and Peter.

Q. What became of them?

A. Them two men went to England at an early age of life. I don't know anything about them since.

Q. How long ago is that?

A. About fifty years since they went.

Q. And have they been heard of since?

A. Well, I did not hear that.

Q. As far as you are concerned, you never heard of them?

A. I never did; I never heard the father nor mother say they heard of them.

Q. What was the daughter's name?

A. Margaret Sullivan.

Q. Whom did she marry?

1342 A. She married a man of the name of John Riordan.

Q. Could you say how long ago?

A. Well, her daughter, I think, is about 42 years, and she was ten months married when the Lord sent her that child.

Q. Forty-three years ago?

A. Yes, coming next Shrove Tuesday.

Q. Were you present at her marriage?

A. I was.

Q. Where?

A. At the South chapel.

Q. How many children were there of that marriage?
A. As far as I could recollect, I know only five.
Q. Give their names.
A. Well, there was one, Kate was the eldest child, and Mary, Margaret, then, and Hugh James was the little boy that was drowned.
Q. Are you sure of the boy's name that was drowned?
A. Yes, Hugh James.
Q. Did you know Peter Sullivan, that worked at Beamish & Crawford's brewery?
A. Well, I often saw him come to Humphrey Sullivan's house.
Q. You saw him come to Humphrey Sullivan's house?
A. Yes.
Q. What relation was Peter Sullivan to Humphrey Sullivan?
A. Well, the dear knows; I could not tell you.
Q. Did you know Hannah Callaghan?
A. No, I did not.
1343 Q. You knew the three girls that are alive at the present time?
A. Certainly I did.
Q. And these are the three girls who claim, in the right of their mother, to be the next of kin of John Sullivan?
A. Well, I could not tell you any more than I am telling you.

MARGARET RIORDAN, a witness called in behalf of the Riordans, and examined by Mr. Blake in their behalf.

Q. Is your name Margaret Riordan?
A. It is.
Q. Where do you reside?
A. 157 Bandon road.
Q. Are you a widow?
A. Yes.
Q. Did you know Mary Riordan, Margaret Riordan and, Katherine?
A. Yes: I am their stepmother.
Q. I believe you married their father after the death of his first wife?
A. Yes.
Q. Did you know Abbe McAuliffe?
A. No, I did not.
Q. Did you know the mother?
A. I did, well.
Q. What was her name?
A. Margaret Sullivan.
Q. Who was her mother, do you know?
A. Well, I always heard it was Mary, who was married to Humphrey Sullivan; I knew Humphrey Sullivan myself.
Q. Do you know was he any relation to Peter Sullivan?

1344 A. Well, I always heard, since I knew the family, that he was.

Q. Peter Sullivan was the uncle and Humphrey Sullivan the nephew; are you sure of that?

A. Well, I could not say, only that I heard. I knew Humphrey Sullivan.

Q. You knew that there was a relationship between them?

A. I think it was Peter Sullivan was the uncle, and Humphrey Sullivan the nephew.

Q. Well, now, did you know Bessie Sullivan?

A. I did.

Q. How did you know her?

A. Coming to the house down to the lane where we lived at the time. She used to be coming and going to the house to the children.

Q. What brought her there?

A. She used to come to see them. She was in service at Mrs. Lyons' and she used to come occasionally to see them.

Q. To see them?

A. Yes.

Q. Did you know what relation the mother of the girl and Bessie Sullivan were to each other?

A. I always thought that their mother and Bessie were first cousins.

Q. And when she got an opportunity of leaving her employment she used to come up there to spend an hour or so with her cousins and second cousins?

A. Yes; that is how I came to know her.

1345 Cross-examined by Mr. DONEGAN:

Q. When did she last come?

A. Well, it is many years ago since I seen her.

Q. Do you know when she last came to see her cousins?

A. The last time I saw her was when Margaret Sullivan died.

Q. When was that?

A. I suppose it was 29 years ago. It is going on to it, whatever.

Q. You state the relationship that existed between Peter and Humphrey Sullivan was that Peter was the uncle and Humphrey the nephew?

A. Well, I know that there was two sisters married to the uncle and nephew, and that was the relationship that existed.

Cross-examined by Mr. RIDDLE:

Q. Did you know her personally always?

A. Yes.

Q. How long have you known her?

(Counsel for complainants object to Mr. Riddle's cross-examining

this witness, on the ground that this witness is not in as a witness in the case of Callaghan and Corcoran *versus* O'Brien and Carrau, but counsel for complainants do not object to Mr. Riddle calling this witness as a witness in his own behalf, if he desires to examine her.

Mr. Riddle states in answer that he understands that the
1346 name of this witness was included in a notice served upon him by counsel for complainants as a witness to be called by complainants.)

A. Well, I know her since before my husband died, many a day before it. I know her these years, but I do not exactly know whether she was anything to the family.

Q. Where did Hannah Callaghan live when you first knew her?

A. In Fort street, near the market.

(Counsel for complainants moved to strike out from the record all questions propounded by Mr. Riddle, and all answers given by the witness just examined, on the ground that she has not been sworn as a witness in the case pending.)

COMPLAINANTS' EXHIBIT "A."

Daniel Swiney, U. S. Consul for Cork. (Seal.)

Church of St. Finbarr.

Certificate of Marriage.

Extract from the marriage registry of the parish of St. Finbarr, Cork, Ireland.

Married, on the 22nd day of September, in the year of our Lord, 1832, according to the rites of the Roman Catholic church, and the laws of Ireland, by the Rev. Alexander Mahoney, Peter Sullivan and Abbey McAuliffe.

1347 I certify the above to be a true copy.

Signature of clergyman, MARY LEONARD, *C. C.*

(One penny rev. stamp affixed.)

Witness-:

MICHAEL MURPHY AND
NORRY McAULIFFE.

Given at Cork, this 23rd day of January, 1901.
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.
PATRICK BUCKLEY.

Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath, sworn to before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
her
MARGARET x McGRATH.
mark.

Witness present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 *Buckingham Place, Cork.*

1348 Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America, for Cork and the dependencies thereof, do hereby certify that the signatures of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan, and, Margaret McGrath are personally known to me, and to me known to be the persons who affixed their names to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof, I have hereunto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and the year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1349 COMPLAINANTS' EXHIBIT "A."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Marriage.

Extract from the marriage registry of the parish of St. Finbarr, Cork, Ireland.

Married, on the 22nd day of September, in the year of our Lord, 183[illegible], according to the rites of the Roman Catholic church, and the laws of Ireland, by the Rev. Alexander Mahony, Peter Sullivan and Abbey McAuliffe.

I certify the above to be a true copy.
Signature of clergyman, JOHN A. DALY, *R. C. C.*,
St. Finbars, Cork.

Witness-:
MICHAEL MURPHY AND
NORRY McAULIFFE.

Given at Cork this 8th day of December, 1900. (Rev. stamp affixed.)

Omnibus quorum interest salutem.

PATRICK BUCKLEY.

1350 COMPLAINANTS' EXHIBIT "B."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the —— Baptised on the 17th day of January in the year of our Lord 1834 according to the rites of the Roman Catholic church by the Rev'd Wm. O'Connor, Eliza Sullivan.
Parents: Peter Sullivan and Abbey McAuliffe.
Sponsors: Charles McCarthy and Ansty Buckley.

I certify the above to be a true copy.
Signature of clergyman, JOHN A. DALY, *R. C. C.*,
St. Finbar's, Cork.

Given at Cork this 8th day of December, 1900. (Rev. stamp affixed.)

Omnibus quorum interest salutem.

PATRICK BUCKLEY.

1351 COMPLAINANTS' EXHIBIT "B."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the —— Baptised on the 17th day of January in the year of our Lord 1834 according to the rites of the Roman Catholic Church, by the Rev'd William O'Connor, Eliza Sullivan.
Parents: Peter Sullivan and Abbey McAuliffe.
Sponsors: Charles McCarthy and Ansty Buckley.

I certify the above to be a true copy.

Signature of clergyman, MARY LEONARD, *C. C.*

(Rev. stamp affixed.)
Given at Cork this 30th day of January, 1901.
Omnibus quorum interest salutem.
March 19th, 1901.
[Seal U. S. Consulate.]
Attest:

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

1352 Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
her
MARGARET x McGRATH.
mark.

Witness- present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 *Buckingham Place, Cork.*
PATRICK BUCKLEY.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their name- to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate, at Queenstown, Ireland, the day and year last above written.

[SEAL.]

DANIEL SWINEY,
United States Consul.

1353 COMPLAINANTS' EXHIBIT "C."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the —— Baptised on the 3rd day of January in the year of our Lord 1836 according to the rites of the Roman Catholic church by the Rev'd J. Clancey, Ellen Sullivan.
Parents: Peter Sullivan and Abagail McAuliffe.
Sponsors: Wm. Murphy and Mary Sullivan.

I certify the above to be a true copy.
Signature of clergyman, JOHN A. DALY, *R. C. C., St. Finbar's, Cork*

Given at Cork this 8th day of December, 1900. (Rev. stamp affixed.)
Omnibus quorum interest salutem.

PATRICK BUCKLEY.

1354 COMPLAINANTS' EXHIBIT "C."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the —— Baptised on the 3rd day of January in the year 1836 according to the rites of the Roman Catholic church, by the Rev'd J. Clancy, Ellen Sullivan.
Parents: Peter Sullivan and Abagail McAuliffe
Sponsors: William Murphy and Mary Sullivan

I certify the above to be a true copy.
Signature of clergyman, MARY LEONARD, *C C.*

Given at Cork this 30th day of January, 1901. (Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:

DANIEL SWINEY,
U. S. Counsel for Cork, Ireland.

Referred to in the affidavit of Catherine Riordan, Mary Riordan, and Margaret McGrath sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
her
MARGARET x McGRATH.
mark.

1355 Witness- present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 *Buckingham Place, Cork.*
PATRICK BUCKLEY.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their name- to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate, at Queenstown, Ireland, the day and year last above written.

[SEAL.] DANIEL SWINEY,
United States Consul.

1356 COMPLAINANTS' EXHIBIT "D."

Daniel Swiney, U. S. Consul for Cork, Commissioner (Seal.)

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the —— Baptised on the 27th day of June in the year of our Lord 1840 according to the rites of the Roman Catholic church, by the Rev'd Alexander Mahony, John Sullivan.

Parents: Peter Sullivan and Abigail McAuliffe.

Sponsors: Humphrey Sullivan and Bridget Callaghan.

I certify the above to be a true copy.
Signature of clergyman, JOHN A. DALY, *R. C. C., St. Finbar's, Cork.*

Given at Cork this 8th day of December, 1900. (Rev. stamp affixed.)
Omnibus quorum interest salutem.

PATRICK BUCKLEY.

1357 COMPLAINANTS' EXHIBIT "D."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the —— Baptised on the 24th day of June in the year of our Lord 1840 according to the rites of the Roman Catholic church, by the Rev'd Alexander Mahony, John Sullivan.
Parents: Peter Sullivan and Abigail McAuliffe.
Sponsors: Humphry Sullivan and Bridget Callaghan.

I certify the above to be a true copy.

Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 30th day of January 1901. (Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

1358 Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
MARGARET X McGRATH.

Witness- present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 *Buckingham Place, Cork.*
PATRICK BUCKLEY.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their names to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate, at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1359 COMPLAINANTS' EXHIBIT "E."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Marriage.

Extract from the marriage registry of the parish of St. Finbarr, Cork, Ireland.

Married on the 3rd day of June in the year of our Lord 1854, according to the rites of the Roman Catholic church, and the laws of Ireland, by the Rev. J. Cummins, Emanuel Savertian de Silva & Ellen Sullivan.

Witness-:
PETER SULLIVAN AND
JOHN SULLIVAN.

I certify the above to be a true copy.
Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 10th day of December, 1900. (Rev. stamp affixed.)

Omnibus quorum interest salutem.

PATRICK BUCKLEY.

1360 COMPLAINANTS' EXHIBIT "E."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Marriage.

Extract from the marriage registry of the parish of St. Finbarr, Cork, Ireland.

Married on the 3rd day of June in the year of our Lord 1854, according to the rites of the Roman Catholic church, and the laws of Ireland, by the Rev. J. Cummins, Emanuel Savertian de Silva & Ellen Sullivan.

Witness-:
PETER SULLIVAN AND
JOHN SULLIVAN.

I certify the above to be a true copy.
Signature of clergyman, MARY LEONARD, *C. C.*

Given at Cork this 18th day of March, 1901. (Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.

[Seal U. S. Consulate.]

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath, sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
MARGARET X. McGRATH.

1361 Witness- present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 *Buckingham Place, Cork.*
PATRICK BUCKLEY.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures

of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their names to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate, at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1362 COMPLAINANTS' EXHIBIT "F."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Jerh. Canon Carey.

Certificate of Marriage.

William Callaghan & Bridget McAuliff were married according to the rites of the Roman Catholic Church on the 26th day of November, 1830, by the Rev'd J. J. Ryan, P. P., the witnesses being John Murphy and Norry Daly.

I hereby certify that the above is a correct & true extract from the marriage register of this parish kept here at the parochial residence.

J. CANON CAREY, *P. P.*

Given at Carrigaline this 5th day of December, 1900. (Rev. stamp affixed.)

COMPLAINANTS' EXHIBIT "G."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Jerh. Canon Carey.

Certificate of Marriage.

John Corcoran & Margaret McAuliffe were married according to the rites of the Roman Catholic church on the 8th of February, 1837, by the Rev'd Jerh. John Ryan, P. P., the witnesses being John Marshal & Mary White.

1363 I hereby certify that the above is a true & correct extract from the marriage register of this parish kept here at the parochial residence.

JERH. CANON CAREY, *P. P.*

Given at Carrigaline, this 20th day of December, 1900. (Rev. stamp affixed.)

COMPLAINANTS' EXHIBIT "H."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Jerh. Canon Carey.

Certificate of Baptism.

Joanna—of William Callaghan and Bridget McAuliffe was baptised according to the rite of the Roman Catholic church on the 26th day of March, 1837, by the Rev'd Jerh. John Ryan, P. P., the sponsors being Maurice Mahony & Joanna Barry.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

J. CANON CAREY, *P. P.*

Given at Carrigaline, this 4th day of December, 1900. (Rev. stamp affixed.)

1364 COMPLAINANTS' EXHIBIT "I."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Jerh. Canon Carey.

Certificate of Baptism.

Ned, son of John Corcoran & Mary McAuliffe, was baptised according to the rite of the Roman Catholic church on the 23rd May, 1837, by the Rev'd Jerh. John Ryan, P. P., the sponsors being James Kennedy and Mary Scannell.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JERH. CANON CAREY, *P. P.*

Given at Carrigaline, this 20th day of December, 1900. (Rev. stamp affixed.)

COMPLAINANTS' EXHIBIT "J."

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

A. I. Dilliard.

The last payment made to Peter Sullivan for labor done by him was effected week ending 12th November, 1869. He was paid first week's pension ending 18th December, 1869, and the last week's pension paid on his account occurred week ending 23d August, 1873.

1365 COMPLAINANTS' EXHIBIT "K."

Daniel Swiney, U. S. Consul for Cork, in Ireland.

Michael O. Regan.
Sacred to the
Memory of
Ellen Silvie
Died Nov. 27, 1871.
Aged 35 years.
R I P

COMPLAINANTS' EXHIBIT "L."

Daniel Swiney, U. S. Consul for Cork, in Ireland.

Michael O. Regan.

Names Found on Plates.

Abigal Sullivan
died
July 26th, 1872.
Aged 66 years.

Peter O'Sullivan
died
Aug. 19th, 1873.
Age broken off.

1366 COMPLAINANTS' EXHIBIT "M."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

R. A. Wolseley.

Extracted from the high court of justice (Ireland), Queen's Bench division (probate), the district registry at Cork.

Oath of Administrator.

High Court of Justice in Ireland, Queen's Bench Division, Probate, the District Registry at Cork.

In the Goods of ELIZA SULLIVAN, Deceased, Intestate.

I, John Sullivan, formerly of Seattle, Washington, in the United States of America, but at present residing at Pembroke street in the county of the city of Cork, rent collector, aged 21 years and upwards, make oath and say that Eliza Sullivan, late of Bull's asylum, Blackrock road in the county of the city of Cork, spinster, deceased, died intestate a spinster without father or mother, but leaving me her lawful brother and only next of kin her surviving, that I will well and faithfully administer the personal estate of the said deceased by paying her just debts and distributing the residue of said estate according to law, and that I will exhibit a true inventory of the said estate, and render a true account thereof, whenever required by law so to do; that the said deceased died at Bull's asylum, Blackrock road aforesaid, on the 30th day of April, one thousand
1367 eight hundred and eighty-six, and that the said deceased had at the time of her death a fixed place of abode at Bull's asylum, Blackrock road aforesaid, within the said district of Cork; and that the whole of the said personal estate amounts in value to the sum of one hundred and sixty-five pounds, nine shillings and eleven pence and no more to the best of my knowledge, information and belief. And I further say that according to the best of my knowledge, information and belief the said deceased was not indebted to any person or persons.

JOHN SULLIVAN.

Sworn at South Mall, Cork, this 25th day of May, 1900, by the said John Sullivan, before me, a commissioner for taking affidavits, and I know James J. Mooney who certifies his knowledge of the deponent.

THOS. H. BARROWS, *Com'r.*

I certify that I know the deponent.

JAMES J. MOONEY,
WYNNE & WYNNE,
Solicitors, Cork.

Probate registry.
12 Dec. '00
Cork.

I certify that the foregoing has been compared with the oath of adm'or lodged here, and is a correct copy of same.

[SEAL.] R. W. WOLSELEY, *D. R.*

Compared J. A. C.

1368 COMPLAINANTS' EXHIBIT "N."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

R. W. Wolseley, D. R.

Extracted from the high court of justice (Ireland), Queen's Bench division (probate), the district registry at Cork.

Oath of Administrator.

High Court of Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

In the Goods of ELLEN SILVA, Deceased, Intestate.

I, John Sullivan, some time residing at Seattle, Washington, in the United States of America, but now residing at Pembroke street, in the county of the city of Cork, rent collector, aged 21 years and upwards, make oath and say that Ellen Silva, late of Evergreen street in the county of the city of Cork, widow, deceased, died intestate a widow without child, grandchild, or the descendant of such and without parent, but leaving me her lawful brother and only next of kin her surviving, that I will well and faithfully administer the personal estate of the said deceased, by paying her just debts and distributing the residue of said estate, according to law, and that I will exhibit a true inventory of the said estate, and render a true account thereof, whenever required by law so to do; that the said deceased died at Evergreen street, aforesaid, on the 27th day of Novem-
1369 ber, one thousand eight hundred and seventy-one, and that the said deceased had, at the time of her death, a fixed place of abode at Evergreen street aforesaid within the said district of Cork; and that the whole of said personal estate amounts in value to the sum of twenty-one pounds five shillings and three pence and no more, to the best of my knowledge, information and belief. And I further say that according to the best of my knowledge, information and belief the said Ellen Silva was not indebted to any person or persons.

JOHN SULLIVAN.

Sworn at South Mall, Cork, this 25th day of May, 1900, by the said John Sullivan, before me a commissioner for taking affidavits, and I know James J. Mooney who certifies his knowledge of the deponent.

THOS. H. BURROWS, *Com'r.*

I certify that I know the deponent.

J. J. MOONEY.
WYNNE & WYNNE,
Solicitors, Cork.

Compd. V. T. M.
Probate registry,
12 Dec. '00
Cork.

I certify that the foregoing has been compared with the oath of administrator lodged here, and is a correct copy of same.

[SEAL.] R. W. WOLSELEY, *D. R.*

1370 COMPLAINANTS' EXHIBIT "O."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

R. W. Wolseley, D. R.

Extracted from the high court of justice, Queen's Bench division (probate), the district registry at Cork.

In the High Court of *the* Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

Be it known that on the 1st day of June 1900 letters of administration of the personal estate of Eliza Sullivan, late of Bull's asylum, Blackrock road, in the county of Cork, spinster, deceased, who died on or about the 30th day of April, 1886, at same place without a parent her surviving, and intestate, and had at the time of her death a fixed place of abode at same place within the district of Cork were granted by the aforesaid court to John Sullivan, formerly of Seattle, Washington, U. S. of America, but now of Pembroke street in the city of Cork, rent collector, the lawful brother and only next of kin of the said intestate, he having been first sworn faithfully to administer the same. And it is hereby certified that the affidavit for the commissioners of inland revenue has been delivered duly stamped and that the amount of the gross value of the estate as shown by the account is £165:9:11.

The — bears a stamp of 1-1-10-0.

Court fees £-15:0.

1371

Extracted by Wynne & Wynne, solicitors.

R. W. WOLSELEY, [SEAL.]
District Register.

Probate registry,
10 Dec. '00
Cork.

I certify that the foregoing has been compared with the entry grant lodged here, and is a correct copy of same.
[SEAL.] R. W. WOLSELEY, *D. R.*

Comp'd. J. A. C.

COMPLAINANTS' EXHIBIT "P."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

R. W. Wolseley, D. R.

Extracted from the high court of justice, Queen's Bench division (probate), the district registry at Cork.

In the High Court of *the* Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

Be it known that on the 1st day of June, 1900, letters of administration of the personal estate of Ellen Silva, late of Ever-
1372 green street, in the city of Cork, widow, deceased, who died on or about the 27th day of November, 1871, at same place, without child, grandchild, or descendant of such and without parent, her surviving, and intestate, and had at the time of her death a fixed place of abode at same place within the district of Cork, were granted by the aforesaid court to John Sullivan, formerly of Seattle, Washington, U. S. A., now residing at Pembroke street in said city of Cork, rent collector, the lawful brother and only next of kin of the said intestate, he having been first sworn faithfully to administer the same. And it is hereby certified that the affidavit for the commissioners of inland revenue has been delivered and that the amount of the gross value of the estate as shown by the account is £21:5:3.

Court fees, £22:10:0.

R. W. WOLSELEY. [SEAL.]

Extracted by
WAYNE & WAYNE, *Solicitors.*

Comp. J. A. C.

Probate registry,
10 Dec. '00.
Cork.

I certify that the foregoing has been compared with the entry gt. lodged here, and is a correct copy of same.
R. W. WOLSELEY, *D. R.*

1373 COMPLAINANTS' EXHIBIT "Q."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

R. W. Wolseley, D. R.

High Court of Justice in Ireland, Probate and Matrimonial Division, the District Registry, Cork.

Know all men by these presents that we, John Sullivan, formerly of Seattle, Washington, in the United States of America, but now of Pembroke street in the city of Cork, rent collector, and Eugene F. Collins, of Temple chambers, 19 Eustace street, in the city of Dublin, solicitor, are jointly and severally bound unto the Right Honourable William Brennan Andrews the Queen's Bench division (probate) of the high court of justice in Ireland in the sum of forty four pounds to be paid to the judge of the said division for the time being for which payment we bind ourselves and each of us for the whole, our heirs, executors and administrators, by these presents. Sealed with our seals. Dated the 25 day of May in the year of our Lord one thousand nine hundred. The condition of this obligation is such that of the above bounden John Sullivan, the lawful brother of Ellen Silva late of Evergreen street, in the city of Cork, widow, deceased, and the intended administrator of the personal estate of the said deceased do when lawfully called on in that behalf make, or cause to be made, a true inventory of the personal estate of the said deceased, which has or shall come to his hands, posses-
1374 sion or knowledge, or into the hands or possession of any other person for him and the same so made do exhibit or cause to be exhibited into the district registry of said division at Cork whenever required by law so to do; and the same personal estate, and all other the personal estate of the said deceased, at the time of his death which at any time after shall come to the hands or possession of the said John Sullivan or unto the hands or possession of any other person or persons for him do well and truly administer according to law (that is to say) do pay the debts which she did owe at her decease; and further do make, or cause to be made, a true account of his said administration whenever required by law so to do, and all the rest and residue of the said personal estate and effects to deliver and to pay unto such person or persons as shall be entitled thereto under the statutes in such case made and provided. And if it shall hereafter appear that any last will was made by the said deceased and the executor or executors or other persons therein named do exhibit the same unto the said division making request to have it allowed and approved accordingly, if the said John Sullivan, being thereunto required, do render and deliver the said letters of administration granted to him (ap-

probation of such testament being first heard and made) in the said division then this obligation to be void and of none effect, or else to remain in full force and virtue. Signed, sealed and delivered by the said John Sullivan in the presence of T. H. Burrowes, com'r.

Signed, sealed & delivered by the said Eugene F. Collins,
1375 in the presence of Randan A. Howt, com'r, 19 Emian St., Dublin.

JOHN SULLIVAN. [SEAL.]
EUGENE F. COLLINS. [SEAL.]

Probate registry.
26 Nov. '01.
Cork.

I certify that the foregoing has been compared with the orig. bond lodged here, and is a correct copy of same.

R. W. WOLSELEY, *D. R.* [SEAL.]

COMPLAINANTS' EXHIBIT "R."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

Mary of John Corcoran & Margaret McAuliff, was baptised on the 28th day of August, 1839, according to the rites of the Roman Catholic church, by the Rev. Jerh. John Ryan, P. P., the sponsors being Maurice Mahony & Ellen Kuffe.

I hereby certify that the above is a correct & true extract from the baptismal register of this parish, kept here at the parochial residence.

JEREMIAH CANON CAREY, *P. P.*

Given at Carrigaline, Co. Cork, this 21st day of November, 1901. (Rev. stamp affixed.)

1376 COMPLAINANTS' EXHIBIT "S."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

John of John Corcoran & Margaret McAuliff was baptised according to the rite of the Roman Catholic church on the 23d of April, 1842, by the Rev. Jereh. John Ryan, P. P., the sponsors being John Linehan & Johanna Diman.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JEREMIAH CANON CAREY, *P. P.*

Given at Carrigaline Co., Cork, this 21st day of November, 1901. (Rev. stamp affixed.)

COMPLAINANTS' EXHIBIT "T."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

Denis of John Corcoran & Margaret McAuliff was baptised according to the rite of the Roman Catholic church on the 15th of June, 1849, by the Rev. Jerh. John Ryan, P. P., the sponsors being Simon Kennedy & Julia Foley.

1377 I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JEREMIAH CANON CAREY, *P. P.*

Given at Carrigaline Co., Cork, this 21st day of November, 1901. (Rev. stamp affixed.)

COMPLAINANTS' EXHIBIT "U."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

Margaret of John & Margaret McAuliff was baptised according to the rite of the Roman Catholic church on the 4th day of September, 1844, by the Rev'd Jerh. John Ryan, P. P., the sponsors being Bartholemew Daniel & Mary Murphy.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JEREH. CANON CAREY, *P. P.*

Given at Carrigaline Co., Cork, this 21st day of November, 1901. (Rev. stamp affixed.)

1378 COMPLAINANTS' EXHIBIT "V."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

I hereby certify the following are the only births from parents named McAuliffe found recorded in the baptismal register of this parish from the year 1803 to the year 1815 inclusive & that the dates of these are respectively Bridget McAuliff baptised 1804—Honora in 1807 & Margaret in 1810.

I am however to state that the father's name given in the case of Bridget is Denis McAuliff & the father's name in each of the other two viz., Honora & Margaret is Daniel McAuliff—the mother's name in all three being Margaret Murphy from which I conclude that there must be a mistake in registering Denis instead of Daniel in the first case.

Carrigaline, Co. Cork, this 4th day of January, 1901.

J. CANON CAREY, *P. P.*

1379 COMPLAINANTS' EXHIBIT "W."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Rob't Gregg.

Sullivan building, Seattle, Washington, U. S. A.

NOV. 19TH, 1895.

Mr. Robert Gregg.

DEAR SIR: I wish to correspond with you in regard to an estate left by my sister Eliza Sullivan deceased. The estate consists of £150:10:4 in the Cork savings bank. Mr. H. Cave kindly gave me your address. You will please let me know what the cost will be for administration in the above estate as near as you can give it such as solicitor, administrator and court fees. And whether I can name who the administrator is to be. All information in regard to the above matter will be thankfully received.

Most respectfully yours, JOHN SULLIVAN.

I have enclosed some old stamps for Mr. H. Cave's boy which you will please send to him.

J. S.

1380 COMPLAINANTS' EXHIBIT "X."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Rob't Gregg.

Offices, 67 South Mall.

Telephone No. 399.

Rob't Gregg, solicitor, commissioner for administering oaths.

CORK, *Dec'r 7th*, 1895.

Mr. John Sullivan, Sullivan building, Seattle, Washington, U. S. A.

DEAR SIR:

ELIZA SULLIVAN, Dec'd.

I rec'd yours of 19th ult. and have seen Mr. Cave and given him the stamps for his son for which he desired me thank you.

It is rather difficult to say exactly the am't of costs of obtaining adm'on to dec'd so much depends on circumstances. If you were here and took out the administration in person and that you are the only next of kin the outside cost would be about £10. If as I say there was no other next of kin—father, mother, brother or sister or child of a dec'd brother or sister, and that you wished to appoint any person here to obtain the administration for you which you could do by executing a power of att'y to that person of course this would add to the expense say probably £3, but it must be sworn to if it be the fact that you are the only brother and only
1381 next of kin of said deceased, which I presume to be the fact.

I think I have given you all the information in my power and await your further instructions. I may also tell you that if you were to come to Cork for the purpose of taking out the administration and that you have any friends who would kindly enter into the necessary administration bond the entire matter would be completed within at the outside a fortnight ex-lusive of holy-days which commence at Xmas and continue for about 10 days after.

I remain, truly yours, ROB'T GREGG.

EXHIBIT ON BEHALF OF CATHERINE, MARY, AND MARGARET RIORDAN, No. 1.

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Church of St. Finbarr.

Certificate of Marriage.

Extract from the marriage registry of the parish of St. Finbarr, Cork, Ireland.

Married on the 23rd day of August in the year of our Lord 1828 according to the rites of the Roman Catholic church, and the laws of Ireland, by the Rev. William Scannell, Humphry Sullivan and Mary McAuliff.

Witness-: Thomas Hankard and John Goslin.

1382 I certify the above to be a true copy.
Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 23rd day of January, 1901.
(Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

Referred to in affidavit of Catherine Riordan, Mary Riordan & Margaret McGrath sworn to before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
her
MARGARET x McGRATH.
mark.

Witness- present to Margaret McGrath affixing her mark and to the other signatures.

DENNIS CREEDON,
3 *Buckingham Place, Cork.*
PATRICK BUCKLEY.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures

of Catherine Riordan, Mary Riordan and Margaret McGrath
1383 to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their names to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

EXHIBIT ON BEHALF OF CATHERINE, MARY, AND MARGARET RIORDAN, No. 2.

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Patrick Buckley.

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on — —— Baptised on the 15th day of September in
1384 the year of our Lord 1831 according to the rites of the Roman Catholic church, by the Rev'd Alexander Mahony, Margaret Sullivan.

Parents: Humphrey Sullivan and Mary McAuliffe.
Sponsors: William Curtin and Mary Haly.

I certify the above to be a true copy.
Signature of clergyman, DANIEL O'SHEA, *C. C.*

Given at Cork this 18th day of January, 1901.
(Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

Referred to in affidavit of Catherine Riordan, Mary Riordan & Margaret McGrath sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
her
MARGARET x McGRATH.
mark.

Witness present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 Buckingham Place, Cork.

1385 Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their names to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1386 EXHIBIT ON BEHALF OF CATHERINE, MARY, AND MARGARET RIORDAN, No. 3.

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Daniel Buckley.

Church of St. Finbarr.

Certificate of Marriage.

Extract from the marriage registry of the parish of St. Finbarr, Cork, Ireland.

Married on the 24th day of February in the year of our Lord 1859 according to the rites of the Roman Catholic church and the laws of Ireland, by the Rev. G. Brenan, John Reardon and Margaret Sullivan.

Witness-: Timothy Reardon, and Margaret Culnane.

I certify the above to be a true copy.
Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 10th day of January, 1901. (Rev. stamp.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

Referred to in affidavit of Catherine Riordan, Mary Riordan & Margaret McGrath sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.
MARY RIORDAN.
MARGARET x McGRATH.

1387 Witness present to Margaret McGrath affixing her mark and to the other signatures.

DENIS CREEDON,
3 Buckingham Place, Cork.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signatures of Catherine Riordan, Mary Riordan and Margaret McGrath to the paper hereto annexed, are their true and genuine signatures, made and acknowledged in my presence, and that the said Catherine Riordan, Mary Riordan and Margaret McGrath are personally known to me, and to me known to be the persons who affixed their names to the foregoing instrument, and declared the same to be their voluntary acts and deeds for the uses and purposes therein described.

In witness whereof I have hereto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1388 EXHIBIT ON BEHALF OF CATHERINE, MARY, AND MARGARET RIORDAN, No. 4.

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Patrick Buckley.

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the—— Baptised on the 18 day of January in the year of our Lord 1860 according to the rites of the Roman Catholic church, by the Rev'd J. O'Connell, Catherine Reardon.

Parents: John Reardon and Margaret Sullivan.

Sponsors: Timothy Reardon and Bessy Sullivan.

I certify the above to be a true copy.
Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 10th day of January, 1901. (Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

1389 Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath Sworn before me this 19th day of March, 1901.

CATHERINE RIORDAN.

Witness present:
DENIS CREEDON,
3 Buckingham Place, Cork.

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signature of Catherine Riordan to the paper hereto annexed, is her true and genuine signature, made and acknowledged in my presence, and that the said Catherine Riordan is personally known to me, and to me known to be the person who affixed her name to the foregoing instrument, and declare the same to be her voluntary act and deed for the uses and purposes therein described.

In witness whereof I have hereunto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and year above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1390 EXHIBIT ON BEHALF OF CATHERINE, MARY, AND MARGARET RIORDAN—No. 5.

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Patrick Buckley.

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the ——, Baptised on the 15th day of December in the year of our Lord 1861, according to the rites of the Roman Catholic church by the Rev'd J. Mahony, Mary Riordan.
Parents: John Riordan and Margaret Sullivan.
Sponsors: Daniel Riordan and Mary Riordan.

I certify the above to be a true copy.
Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 14th day of January, 1901. (Rev. stamp.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

1391 Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath, sworn before me this 19th day of March, 1901.

MARY RIORDAN.

Witness present:
DENIS CREEDON,
3 *Buckingham Place, Cork.*

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and the dependencies thereof, do hereby certify that the signature of Mary Riordan to the paper hereto annexed, is her true and genuine signature, made and acknowledged in my presence, and that the said Mary Riordan is personally known to me, and to me known to be the person who affixed her name to the foregoing instrument, and declared the same to be her voluntary act and deed for the uses and purposes therein described.

In witness whereof I have hereunto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
United States Consul.

1392 EXHIBIT ON BEHALF OF CATHERINE, MARY, AND MARGARET RIORDAN—No. 6.

Daniel Swiney, U. S. Consul for Cork, Commissioner. (Seal.)

Patrick Buckley.

Church of St. Finbarr.

Certificate of Baptism.

Extract from the baptismal registry of the parish of St. Finbarr, Cork, Ireland.

Born on the ——, Baptised on the 11th day of March, in the year of our Lord 1864, according to the rites of the Roman Catholic church, by the Rev'd J. O'Mahony, Margaret Riordan.
Parents: John Riordan and Margaret Sullivan.
Sponsors: Michael Corkran and Ellen Sullivan.

I certify the above to be a true copy.
Signature of clergyman, MARK LEONARD, *C. C.*

Given at Cork this 14th day of January, 1901. (Rev. stamp affixed.)
Omnibus quorum interest salutem.
March 19th, 1901.
Attest:
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

1393 Referred to in the affidavit of Catherine Riordan, Mary Riordan and Margaret McGrath sworn before me this 19th day of March, 1901.

her
MARGARET x McGRATH.
mark

Witness present:
DENIS CREEDON,
3 *Buckingham Place, Cork.*

Consulate of the United States of America at Cork (Queenstown), Ireland.

MARCH 19TH, 1901.

I, Daniel Swiney, consul of the United States of America for Cork and dependencies thereof, do hereby certify that the signature of Margaret McGrath (by mark) to the paper hereto annexed, is her true and genuine signature, made and acknowledged in my presence, and that the said Margaret McGrath is personally known to me, and to me known to be the person who affixed her name to the foregoing instrument, and declared the same to be her voluntary act and deed for the uses and purposes therein described.

In witness whereof I have hereunto set my hand and affixed the seal of this consulate at Queenstown, Ireland, the day and year last above written.

[Seal U. S. Consulate.]

DANIEL SWINEY,
U. S. Consul.

1394 RIORDAN CLAIMANTS' EXHIBIT No. 7.

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Extracted from the high court of justice, Queen's Bench division (probate), the district registry at Cork.

In the High Court of Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

Be it known that on the 1st day of June, 1900, letters of administration of the personal estate of Eliza Sullivan, late of Bull's asylum, Blackrock road, in the county of Cork, spinster, deceased, who died on or about the 30th day of April, 1886, at same place without a parent her surviving and intestate, and had at the time of her death a fixed place of abode at same place within the district of Cork, were granted by the aforesaid court to John Sullivan formerly of Seattle, Washington, U. S. America, but now of Pembroke street in the city of Cork, rent collector, the lawful brother and only next of kin of the said intestate, he having been first sworn faithfully to administer the same. And it is hereby certified that the affidavit for the commissioners of inland revenue has been deliv-
1395 ered duly stamped and that the amount of the gross value of the estate so shown by the account is £165:9:11.

R. W. WOLSELEY, [SEAL]
District Register.

The affidavit bears a stamp of £1:10:0.
Court fees £:15:0.
Extracted by
WYNNE & WYNNE, *Solicitors.*

Probate registry, 17 Jan. '01, Cork.
Comp'd. J. A. C.

I certify that the foregoing has been compared with the entry grant lodged here and is a correct copy of the same.

R. W. WOLSELEY, *D. R.* [SEAL.]

Referred to in the affidavit of Alfred Blake, solicitor. Sworn before me this 16th day of April, 1901.

ALFRED BLAKE.

Attest:
16th April, 1901.
[Seal U. S. Consulate.]

DANIEL SWINEY,
U. S. Consul for Cork, in Ireland.

1396 RIORDAN CLAIMANTS' EXHIBIT No. 8.

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Extracted from the high court of justice, Queen's Bench division (probate), the district registry at Cork.

Oath of Administrator.

High Court of Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

In the Goods of ELLEN SILVA, Deceased, Intestate.

I, John Sullivan, some time residing at Seattle, Washington, in the United States of America, but now residing at Pembroke street in the county of the city of Cork, rent collector, aged 21 years and upwards, make oath and say that Ellen Silva, late of Evergreen street in the county of the city of Cork, widow, deceased, died intestate a widow without child, grandchild or the descendant of such and without parent but leaving me her lawful brother and only next of kin her surviving, that I will well and faithfully administer the personal estate of the said deceased by paying *his* just debts and distributing the residue of said estate according to law, and that I will exhibit a true inventory of the said estate and render a true account thereof whenever required by law so to do; that the said deceased died at Ever-
1397 green street aforesaid on the 27th day of November one thousand eight hundred and seventy-one and that the said deceased had at the time of her death a fixed place of abode at Evergreen street aforesaid within the said district of Cork, and that the whole of the said personal estate amounts in value to the sum of twenty-one pounds five shillings and three pence and no more to the best of my knowledge, information and belief. And I

further say that according to the best of my knowledge, information and belief the said Ellen Silva was not indebted to any person or persons.

(Signed) JOHN SULLIVAN.

Sworn at South Mall, Cork, this 25th day of May, 1900, by the said John Sullivan before me a commissioner for taking affidavits, and I know James J. Mooney, who certifies his knowledge of the deponent.

THOS. H. BURROWES, *Com'r.*

I certify that I know the deponent.

J. J. MOONEY.
WYNNE & WYNNE,
Solicitors, Cork.

Probate rogistry
22 Jan. '01.
Cork.
Comp'd. J. A. C.

I certify that the foregoing has been compared with the oath of adm'n'r lodged here, and is a correct copy of same.
[SEAL.] R. W. WOLSELEY, *D. R.*

1398 Referred to in the affidavit of Alfred Blake. Sworn before me this 16th day of April, 1901.

ALFRED BLAKE.

Attest: 16th April, 1901.
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, in Ireland.

RIORDAN CLAIMANTS' EXHIBIT No. 9.

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Extracted from the high court of justice, Queen's Bench division (Ireland), the district registry at Cork.

Oath of Administrator.

High Court of Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

In the Goods of ELIZA SULLIVAN, Deceased, Intestate.

I, John Sullivan, formerly of Seattle, Washington, in the United States of America, but at present residing at Pembroke street in the county of the city of Cork, rent collector, aged 21 years and upwards, make oath and say that Eliza Sullivan, late of Bull's

asylum, Blackrock road, in the county of the city of Cork, spinster, deceased, died intestate a spinster without father or mother,
1399 but leaving me her lawful brother, and only next of kin her surviving, that I will well and faithfully administer the personal estate of the said deceased by paying her just debts, and distributing the residue of said estate according to law and that I will exhibit a true inventory of the said estate and render a true account thereof whenever required by law so to do; that the said deceased died at Bull's asylum, Blackrock road aforesaid, on the 30th day of April one thousand eight hundred and eighty-six; and that the said deceased had at the time of her death a fixed place of abode at Bull's asylum, Blackrock road aforesaid, within the said district of Cork; and that the whole of the said personal estate amounts in value to the sum of one hundred and sixty-five pounds nine shillings and eleven pence, and no more to the best of my knowledge, information and belief, and I further say that according to the best of my knowledge, information and belief the said deceased was not indebted to any person or persons.

(Signed) JOHN SULLIVAN.

Sworn at South Mall, Cork, this 25th day of May 1900 by the said John Sullivan, before me a commissioner for taking affidavits, and I know James J. Mooney who certifies his knowledge of the deponent.

THOS. H. BURROWES, *Com'r.*

1400 I certify that I know the deponent.

JAMES J. MOONEY.
WYNNE & WYNNE,
Solicitors, Cork.

Comp'd. J. A. C.
Probate registery
22 Jan. '01
Cork.

I certify that the foregoing has been compared with the oath of adm'or lodged here, and is a correct copy of same.

R. W. WOLSELEY, *D. R.* [SEAL.]

Referred to in the affidavit of Alfred Blake, solicitor. Sworn before me this 18th day of April, 1901.

ALFRED BLAKE.

Attest: 16th April, 1901.
[SEAL.]

DANIEL SWINEY,
U. S. Consul for Cork, in Ireland.

R. W. WOLSELEY, *D. R.*

RIORDAN CLAIMANTS' EXHIBIT No. 10.

Daniel Swiney, U. S. *Commissioner* for Cork, Commissioner.

Extracted from the high court of justice, Queen's Bench division (probate), the district registry at Cork.

In the High Court of Justice in Ireland, Queen's Bench Division (Probate), the District Registry at Cork.

1401 Be it known that on the 1st day of June, 1900, letters of administration of the personal estate of Ellen Silva, late of Evergreen street in the city of Cork, widow, deceased, who died on or about the 27th day of November, 1871, at same place without child, grandchild or descendant of such, and without parent her surviving and intestate, and had at the time of her death a fixed place of abode at same place, within the district of Cork, were granted by the aforesaid court to John Sullivan, formerly of Seattle, Washington, U. S. A., now residing at Pembroke street in said city of Cork, rent collector, the lawful brother and only next of kin of the said intestate, he having been first sworn faithfully to administer the same. And it is hereby certified that the affidavit for the commissioners of inland revenue has been delivered and that the amount of the gross value of the estate as shown by the account is £21 : 5 : 3.

R. W. WOLSELEY, [SEAL.]
District Register.

Court fees, £2–10–0.
Extracted by
WYNNE & WYNNE, *Solicitors.*

Probate registry
17 Jan. '01
Cork.

I certify that the foregoing has been compared with the entry grant lodged here, and is a correct copy of same.

R. W. WOLSELEY, *D. R.* [SEAL.]

1402 Referred to in the affidavit of Alfred Blake, solicitor. Sworn before me this 16th day of April, 1901.

ALFRED BLAKE.

Attest: 16th April, 1901.
[SEAL.]

R. W. WOLSELEY, *D. R.*

DANIEL SWINEY,
U. S. Consul for Cork, Ireland.

DEFENDANT MARIE CARRAU EXHIBIT "A."

Daniel Swiney, U. S. Consul for Cork, in Ireland, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

Bridget of Denis McAuliff & Marg't Murphy was baptised according to the rite of the Roman Catholic church on the 28th day of October, 1804, by Rev'd Jerh. John Ryan, P. P., the sponsors being Thomas Punch and Elizabeth Barry.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JERH. CANON CAREY, *P. P.*

Given at Carrigaline Co. Cork this 21st day of November, 1901. (Rev. stamp affixed.)

1403 DEFENDANT MARIE CARRAU EXHIBIT "B."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

Honora of Daniel McAuliff & Margaret Murphy was baptised according to the rite of the Roman Catholic church on the 22nd of July 1897 by the Rev'd Jerh. John Ryan P. P., the sponsors being Cornelius Foot & Mary Murphy.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JER. CANON CAREY, *P. P.*

Given at Carrigaline Co. Cork this 21st day of November, 1901. (Rev. stamp affixed.)

DEFENDANT MARIE CARRAU EXHIBIT "C."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Certificate of Baptism.

Margaret of Daniel McAuliff & Margaret Murphy was baptised according to the rites of the Roman Catholic church on the
1404 20th of March 1810 (ten) by the Rev'd Jeremiah John Ryan P. P. the sponsors being James Barry & Ellen Meschil.

I hereby certify that the above is a true & correct extract from the baptismal register of this parish kept here at the parochial residence.

JERH. CANON CAREY, *P. P.*

Given at Carrigaline Co. Cork this 21st day of November, 1901. (Rev. stamp affixed.)

DEFENDANT MARIE CARRAU EXHIBIT "D."

Daniel Swiney, U. S. Consul for Cork, Commissioner.

Jerh. Canon Carey.

Negative Certificate.

Having carefully examined the baptismal register of this parish transmitted to me and now in my custody from the year 1804 to the year 1820 inclusive, I fail to discover any record of the birth or baptism of either Abina, Abbey, or Abigal McAuliffe or Mary McAuliffe.

This I certify to be perfectly true.

JEREMIAH CANON CAREY, *P. P.*

Carrigaline, Co. Cork, this 21st day of November, 1901.

[Title of Court and Cause.]

Notice.

To Eugene F. Collins, solicitor, Temple chambers, Eustace street, Dublin, Ireland:

1405 You are hereby authorized by the undersigned to appear in their behalf, at the office of the consul of the United States, at Cork and Queenstown, in the matter of the taking of the depositions in the above-entitled cause, and to examine and cross-examine any and all witnesses in their behalf, for claimants which the undersigned now represent, or may hereafter represent.

PETER BREEN,
ALEXANDER MACKEL,
JAMES E. BRADFORD,
Attorneys for Claimants.

[Title of Court and Cause.]

Authority to Appear.

In the matter of the taking of depositions, pursuant to the commission heretofore issued out of the above-entitled court, directed

to the United States consul in Ireland, and to any officer therein, authorized to administer oaths for such purpose, the defendant, Marie Carrau, by her solicitors, W. F. Hays and J. P. Houser, hereby authorizes and appoints Henry Donegan, Esq., solicitor of the city of Dublin, Ireland, to appear in said cause at the taking of the depositions above referred to, as solicitor for the respondent, Marie Carrau, and in all things represent her in the taking of said depositions as such solicitor, with full power to said Donegan to appoint or name any other person to so appear as solicitor on behalf of the said Marie Carrau, and to introduce any evidence upon re-
1406 buttal as he or his appointee may *seem* proper, and to do any and all things in the premises which may be, in his opinion, necessary to protect the rights of said respondent.

Dated at Seattle, Washington, this 25th day of October, A. D. 1901.

W. F. HAYS AND
J. P. HOUSER,
Solicitors for Marie Carrau.

[Title of Court and Cause.]

Oath of Commissioner.

KINGDOM OF GREAT BRITAIN AND IRELAND, }
Cork County, City of Queenstown. }

I, Daniel Swiney, consul of the United States at Cork and Queenstown in Ireland, the duly appointed commissioner in the above-entitled suit, do solemnly swear that I will faithfully discharge the duties of the office of commissioner in the above-entitled suit to the best of my ability, so help me God.

DANIEL SWINEY.

Sworn to and subscribed before me this 18th day of November, 1901.

[NOTARIAL SEAL.] ARTHUR JULIAN,
Notary Public and Commissioner for Administering Oaths for the Supreme Court and Judicature in Ireland and a Solicitor of said Court.

1407 [Title of Court and Cause.]

Stipulation.

Whereas, a commission has been issued out of the circuit court of the United States for the district of Washington, northern division, in a certain cause therein pending, and wherein Hannah O'Callaghan, otherwise known as Johanna Callaghan, and Edward Corcoran, are

complainants, and Terence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, are defendants, for the examination of witnesses in Ireland before the consul of the United States at Cork and Queenstown, Ireland, and in other places in Ireland, to wit, Dublin and Belfast:

Now, therefore, in order to save expenses to the parties represented by the undersigned respectively, it is stipulated by the undersigned as follows:

1. That any evidence and testimony which may be taken under said commission in said suit in the circuit court of the United States for the district of Washington, may be read and shall be received in evidence in the superior court of the State of Washington for King county in any suit, matter or proceeding, affecting the estate of John Sullivan, deceased, or any claimant of the whole or any part of said estate, which is now or may hereafter be pending in said superior court, and also in any such suit, action or proceeding, other than the suit in which said commission issued, now or hereafter pending in the circuit court of the United States for the district of Washing-
1408 ton; subject, however, in both courts to the objections hereinafter mentioned in paragraphs 2 and 3, and none other.

2. A question propounded to a witness may be objected to for the reason that the same is incompetent, irrelevant and immaterial, on the same grounds as if the witness was upon the witness-stand testifying in open court in any court in which such testimony is offered; and an answer of a witness may be moved against and stricken out on the same grounds that such answer could be moved against and stricken out if the witness was upon the witness-stand testifying in open court in any court in which such testimony is offered.

3. Documentary evidence and all papers offered in evidence may be objected to on the ground that the document or paper offered is incompetent, irrelevant or immaterial for the same reason that such document or paper would be incompetent, irrelevant or immaterial if offered in open court in any court in which such document or paper is offered, except that no document or paper shall be rejected on the ground that it is not an original, if any witness at the time of giving his deposition shall produce the orignal before the commissioner appointed by the commission issuing out of said circuit court of the United States for the district of Washington, in the suit first above mentioned, and a copy of such original document or paper, identified by the witness, shall be attached to the deposition of such witness.

4. It is further stipulated by and between the undersigned that any person signing this stipulation shall have the right to cross-examine any witness examined under said commission is-
1409 sued out of the circuit court of the United States for the district of Washington, and to introduce witnesses under said commission, as fully and effectually as though the person signing this stipulation appeared in said suit in the circuit court of the

United States for the district of Washington, wherein said Hannah O'Callaghan, otherwise known as Johanna Callaghan, and Edward Corcoran, are complainants, and Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, are defendants.

Dated at Seattle this 23d day of October, 1901.

PRESTON, CARR & GILMAN,
Attorneys for Margaret Lowney and Michael Sullivan.
WILSHIRE & KENAGA,
Attorneys for Jeremiah Sullivan, James Sullivan, Margaret Mahoney, Catherine Sweeney, Jno. Sweeney, Patrick Sweeney, Michael Sweeney, and for All Others for Whom We May Appear.
ROBERTS & LEEHEY AND
LEWIS, HARDIN AND ALBERTSON,
Attorneys for John and Mary Sullivan.
PRATT & RIDDLE,
Attorneys for Terrence O'Brien, Adm'r.
PETER BREEN AND
ALEXANDER MACKEL AND
JAMES E. BRADFORD,
Attorneys for Mrs. Mary Sullivan.
JOHN B. AULT,
Attorneys for Margaret Riordan (Margaret McGrath), Mary Riordan and Catherine Riordan.
1410 E. J. BRANDT AND
WM. H. O'BRIEN,
Attorneys for Cornelius Sullivan.
PILES, DONWORTH & HOWE,
Attorneys for Hannah O'Callaghan, Otherwise Known as Johanna Callaghan, and Edward Corcoran.

J. B. H. W. F. H.

The foregoing stipulation is binding on the undersigned subject to the following reservation: As between complainants in the suit in the United States court and the defendant Marie Carrau, said defendant specifically reserves the right to object to the jurisdiction of either the State or the Federal court over the person or the subject matter in either the above-entitled action or any other proceeding against this defendant now pending, or that may be hereafter brought against her, but not because the evidence was taken in another suit.

W. F. HAYS AND
J. P. HOUSER,
Solicitors for Marie Carrau.
PILES, DONWORTH & HOWE,
Attorneys for O'Callaghan and Corcoran.

1411 UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, District of Washington.

Dedimus Potestatem.

The President of the United States of America to Daniel Swiney, Esq., consul of the United States at Cork and Queenstown, and to his alternate in the order hereinafter designated to wit, to his successor in office, to the vice-consul, deputy, or representative of such consul, or the successor of such consul at Cork and Queenstown, separately, Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and each of you, separately, a commissioner, and by these presents do give you and each of you, separately, full power and authority diligently to examine upon their corporal oaths or affirmations, before you to be taken, upon oral interrogatories and cross-interrogatories.

Edward Corcoran, 44 Queen St., Dublin Ireland.

Hannah O'Callaghan, Gillaclough cottages, off Ford St., Cork, Ireland.

Rev. John A. Daly, rector of St. Finbar, Cork, Ireland.

Rev. Mark Leonard, of St. Finbar, Cork, Ireland.

J. Cother (or Cotter) superintendent of registrar of births, deaths and marriages for district of Cork, having an office at Douglass roads, Cork.

Ellen Davidson, Crone's lane, off Evergreen street, Cork.

Elizabeth Cowlig, 114 Evergreen road, Cork.

1412 Catherine Murphy, No. 5 Crone's lane, Cork.

Dennis Riordan, No. 2 Crone's lane, Cork.

Mary B. Davidson, No. 2 Crone's lane, Cork.

Nora O'Connell, 15 Evergreen street.

Rev. Canon Carey, parish priest, Carrigaline, County Cork.

Miss —— Bull, of Bull's lunatic asylum, Black Rock road, near Cork.

R. W. Wolseley, district registrar of the high court of justice in Ireland, Queen's Bench division probate district registry at Cork.

As witnesses on the part of the complainants in a certain cause now pending and undetermined in the circuit court of the United States of the ninth judicial circuit in and for the district of Washington, wherein Hannah O'Callaghan and Edward Corcoran are complainants, and Terence O'Brien, as administrator of the estate of John Sullivan deceased, and Marie Carrau, are defendants; and we do further authorize and empower you to begin the taking of testimony under this commission on the 15th day of October, 1901, if at any time not less than five (5) days prior to said date notice of

the taking of such testimony shall be given by the one party to the other, and after the 15th day of October, 1901, you are authorized and empowered to take the testimony of any witness produced under this commission, if the party producing such witness shall have given to the other party a notice of the taking of such testimony five (5) days prior to the time of taking the same, which
1413 notice shall state the name and address of the witness whose testimony such party desires to take, and the time and place of taking the same, and which notice may be served by the solicitors of the one party on the solicitors of the other party either in Seattle or in Ireland. By the word "party," as used in this commission, is meant the complainants upon the one hand, and the defendant, Terence O'Brien as administrator of the estate of John Sullivan, deceased, on the other hand.

And we do further empower you to cause the testimony of any witness examined under this commission to be taken down in shorthand, and thereafter written out in typewriting or longhand; or it may be written out originally in longhand, at the discretion of you or such of you as shall cause such testimony to be taken; and, after such testimony has been so written out, you shall cause the same to be signed by the witness, unless the signature of such witness is waived by said parties or their solicitors.

And we do further empower you, when the taking of testimony has been begun, to adjourn the taking of the same from time to time in your discretion; and we do further empower you, in taking said testimony, to follow the directions contained in this commission and in the order of this court, a certified copy of which is hereunto attached.

And we do further empower you, and each of you, in the order above designated, separately, to examine in behalf of the complainants, and also in behalf of the defendant, Terence O'Brein,
1414 as administrator of the estate of John Sullivan, deceased, and in like manner, any other person or persons who may be produced as witnesses before you, and we do hereby require you, and such of you before whom such testimony may be taken, to cause the same to be reduced to writing and to close it up under our hand and seal directed to A. Reeves Ayres, clerk of the circuit court of the United States of the ninth judicial circuit in and for the district of Washington, at the city of Seattle, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause endorsed on the envelope of the commission.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 13th day of September, in the year of our Lord one thousand nine hundred and one, and of our Independence the one hundred and twenty-sixth.

[Seal U. S. Circuit Court.]

A. REEVES AYRES, *Clerk*,
By R. M. HOPKINS,
Deputy Clerk.

[Title of Court and Cause.]

Order for Commission.

On reading and filing the affidavit of S. H. Piles, one of the solicitors for complainants, in the above-entitled suit, and the
1415 motion of complainants for the issuance of a commission and the notice of said motion with the admission of service thereof on the solicitors for the defendant, Terence O'Brien, as administrator of the estate of John Sullivan, deceased, and it appearing to the court that an order for a decree *pro confesso* has been entered against the defendant, Marie Carrau:

On motion of Piles, Donworth & Howe, and C. H. Farrell, solicitors for complainants, it is ordered that a commission be issued in this suit out of this court, under the hand of the clerk — of the seal of this court, directed to the consul of the United States, and in the alternative, respectively to his successor in office, to the vice-consul of the United States, to the deputy or representative of said consul of the United States, each of whom, in case of the absence or disability of Daniel Swiney, the present consul, is hereby separately appointed in the order designated, commissioner, and to act in his place and stead, at the following named places, respectively, namely: To Daniel Swiney, Esq., consul of the United States at Cork and Queenstown, and in the alternative respectively to his successor in office, to the vice-consul, deputy or representative of such consul or to the successor of such consul, who in case of his absence or disability is hereby separately appointed in the order designated, commissioner, and to act in his place and stead to examine the following named persons under oath as witnesses herein, in behalf of the above-named complainants to wit:

Edward Corcoran, 44 Queen St., Dublin, Ireland.

Hannah O'Callaghan, Gillaclough cottages, off Ford St., Cork, Ireland.

1416 Rev. John A. Daly, rector of St. Finbar, Cork, Ireland.

Rev. Mark Leonard, of St. Finbar, Cork, Ireland.

J. Cother (or Cotter), superintendent of registrar of births, deaths and marriages, for district of Cork, having office at Douglass roads, Cork.

Ellen Davidson, Crone's lane, off Evergreen street, Cork.

Elizabeth Cowlig, 114 Evergreen road, Cork.

Catherine Murphy, No. 5 Crone's lane, Cork.

Denis Riordan, No. 2 Crone's lane, Cork.

Mary B. Davidson, No. 2 Crone's land, Cork.

Nora O'Connell, 15 Evergreen street.

Rev. Canon Carey, parish priest, Carrigaline, County Cork.

Miss —— Bull, of Bull's lunatic asylum, Black Rock road, near Cork.

R W. Wolseley, district registrar of the high court of justice in Ireland, Queen's Bench division, probate district registry at Cork.

It is further ordered that the examination of witnesses under this commission shall take place prior to the first day of January, 1902.

It is further ordered that the examination of all witnesses under this commission shall be oral, or taken by question and answer in the usual manner of taking oral depositions, by examination, cross examination, and redirect examination; that the testimony given at such examination shall be reduced to writing, signed by the witnesses if their signatures are not waived, and certified by the commissioner taking such testimony and by such commissioner transmitted by mail to the clerk of this court at Seattle.

1417 It is further ordered that the defendant administrator may, if he be so advised, attend the taking of the testimony of said witnesses and any others whose testimony may be taken in behalf of the complainants, and cross-examine said witnesses.

It is further ordered that the complainants and the defendant administrator shall have the right to examine not only the witnesses herein named, but any other witnesses whom they may desire to examine and who shall be produced before said commissioner, his vice-consul, deputy or representative, the time and place of taking the testimony of such witnesses and the names and addresses of such witnesses, to be furnished by the party taking the same to the solicitors in Seattle or Ireland, of the other party, five days prior to the time designated for the taking of such depositions; the designation "party" in this order meaning the complainants on the one hand, and the defendant administrator on the other, but not the defendant, Marie Carrau, who is in default.

It is further ordered that the testimony of any and all witnesses taken under this commission may be taken down by any person designated by the commissioner, his vice-consul, deputy or representative, in shorthand, and thereafter written in typewriting or longhand, or it may be written out originally in longhand, at the election of the officer before whom said testimony is taken.

It is further ordered that the taking of testimony under this commission shall not be begun until the 15th day of October, 1901, but the taking of testimony may be begun on said day, if at any time not less than five days prior to said day notice of the

1418 taking of such testimony shall be given by the one party to the other; the testimony of any witnesses may be taken after the 15th day of October, 1901, upon the one party giving to the other a notice of the taking of such testimony five days prior to the taking of the same, which shall state the name and address of the witness whose testimony such party desires to take, and the time and place of taking the same. Such notice may be served by the solicitors of the one party on the solicitors of the other, either in Seattle or Ireland.

It is further ordered that when the taking of testimony has been begun, the commissioner herein appointed, his vice-consul, deputy or

representative, shall have the right to adjourn the taking of depositions from time to time in his discretion.

Dated Seattle, Washington, September 11th, 1901.

C. H. HANFORD,
District Judge of the United States,
Presiding in the Circuit Court of the United States.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, A. Reeves Ayres, clerk of the circuit court of the United States, for the district of Washington, do hereby certify that I have compared the foregoing copy with the original order to issue commission to take depositions in the above-entitled cause, now on file and of record in my office at Seattle, in the northern division of the district of Washington; and that the same is a full, true and
1419 correct copy of said original order, and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, this 13th day of September, 1901.

[Seal U. S. Circuit Court.]

A. REEVES AYRES,
Clerk United States Circuit Court, District of Washington,
By R. M. HOPKINS,
Deputy Clerk.

Statement.

Handed me by Mr. Donegan.

Daniel Swiney, U. S. Consul for Cork, Commissioner.

I now desire to state and that the record should show that owing to the limited time at my disposal for a proper investigation of the facts involved in the alleged relationship of the complainants to the deceased, and the brief lapse of time between the date of my instructions from Messrs. Hays and Houser to appear on behalf of the defendant Marie Carrau at this commission, and the time set for the hearing, and further that such investigation would involve considerable expense which I have had no instructions to incur, I am unable at this time to produce any witnesses on behalf of said defendant. At the opening of this commission I was served with a notice by complainants' counsel in which they notified me of their intention to take the testimony of several witnesses amongst
1420 the names of whom are Ellen Lyons, Eugene Collins and James Mooney. The complainants are now seeking to bring this commission to a close without taking the testimony of any of the said witnesses notwithstanding their notice and the fact that

two of the said witnesses, viz: Ellen Lyons and James Mooney are the only people that knew the deceased, John Sullivan, and saw him when he was in Ireland in 1900. The said Ellen Lyons has had several letters from the deceased, some of them written to her by him while he was in Cork, in which he refers to his being a stranger in Cork, and "to his not finding any person he knew," which letters complainants have had in their custody for some weeks. This Ellen Lyons is the lady in whose house deceased often stayed and with whom he stayed on a visit in 1900. Further, she is the Mrs. Lyons that several witnesses examined at this inquiry have deposed to as being the employer of Bessie Sullivan. The witness, James Mooney, saw and spoke to John Sullivan, the deceased, when he was in Cork, and the said Eugene Collins acted as solicitor for deceased, and also went security on the bonds required by the probate authorities when said John Sullivan was raising representation to his late sisters Ellen and Bessie. Now, I charge the complainants with endeavoring to keep most important testimony out of the record, and I hereby give notice that I will advise my principals in Seattle to apply to the courts to grant a new commission immediately in order that this evidence, which all along I was led to believe by complainants would be produced, may be taken.

1421 Henry F. P. Donegan, solicitor, land and insurance agent.

Telephone No. 333.

Offices, 90 South Mall.

CORK, 28 *Nov.*, 1901,

J. B. Howe, Esq., sol., Victoria hotel.

DEAR SIR: In reference to our conversation of to-day, I beg to state that I shall not call any witnesses.

I shall be obliged to you if you will so notify Mr. Riddle.

Yours truly, HENRY F. P. DONEGAN.

Royal Victoria hotel, Cork.

Re HANNAH CALLAGAN ET AL.
vs.
TERENCE O'BRIEN, as Adm'r, ET AL.

To the Hon. Daniel Swiney, U. S. consul and com'r in the above matter:

The undersigned, on behalf of the above-named administrator, desires to state that at the close of complainant's testimony he will introduce no further witnesses.

Respectfully, C. A. RIDDLE.

——— ———,

Counsel for Adm'r.

1422 Blakes, solicitors, Cork.

Telephone No. 53.

Offices, 27 Marlboro street.

CORK, *29th November*, 1901.

J. C. & A. Blake, solicitors.

CALLAGHAN
v.
O'BRIEN and Others.

Daniel Swiney, Esq., U. S. consul, Queenstown.

DEAR SIR: On behalf of Catherine Riordan, Mary Riordan and Margaret McGrath, otherwise Riordan, we beg to say that we have no further witnesses to be examined on this inquiry and consent to have the commission closed.

Yours truly,

J. C. & A. BLAKE.

In reply to the written statement filed by Mr. Donegan at the closing of the commission, I desire to state in behalf of complainants that the reason I did not examine Mr. Mooney, Mrs. Lyons and Mr. Collins was there was no reason for me to examine witnesses who would have been properly examined only in rebuttal, because the defendants had not introduced any testimony which it was necessary to rebut. The defendants could just as easily have examined those witnesses as I could have done, and the statement filed by Mr. Donegan is an attempt to create an impression which is not borne out by any of the facts in the case. I became satisfied that Mr. Collins was attempting to entrap us into calling him as a witness so that Mr. Donegan could cross-examine him for the benefit of Marie Carrau, and that
1423 Mr. Collins was also laying his plans to make us pay heavily for such testimony as Mrs. Lyons would furnish. I know that Mr. Collins had been paid £20 to furnish information, and that he was to receive £20 more when the complainants recovered in the suit. I was satisfied from my knowledge of the case and from what had come under my personal observation that Mr. Collins was acting in an unfair and double-faced manner, and I was unwilling to trust him upon the witness stand. I knew he was a solicitor for Mrs. Lyons, and I felt satisfied that he would endeavor to get us in a position where Mrs. Lyons would charge us heavily before giving any testimony. I also felt that Mr. Collins was working in collusion with Mr. Donegan, and that as far as he was able he would make the testimony of Mrs. Lyons on cross-examination as unfavorable as possible, and I was unwilling to run the risk of having either witnesses called by us, but I was perfectly willing to waive the five days' notice and allow the defendants to call all three of the witnesses named by Mr. Donegan. Mr. Mooney's testimony I did not

regard as material, but I was willing to have his testimony taken at any time if the defendants desired it.

Mr. Collins had furnished me with a document for which he charged me £5, and then he used the information which that document afforded for the purpose of attempting to defeat my case. The document was immaterial and of no value, but it was worth £5 to me to find out the character of man Mr. Collins was, and I consider the money well invested for the information as to Mr. Collins which I obtained.

1424 The statements contained in the paper filed by Mr. Donegan are without foundation, and it is unnecessary to reply to them in detail, as throughout the case he attempted to create impressions rather than to furnish facts.

I can only conclude that the reason the defendants did not introduce any witnesses except Canon Carey and Mr. Cave was that they had none to introduce, and that they felt the complainants had made out such a conclusive case that it was impossible to shake it.

JAMES B. HOWE.

We consent to the closing of the commission this 7th day of December, 1901.

PILES, DONWORTH & HOWE,
Solicitors for Complainants.

COMPLAINANTS' EXHIBIT "Y 49."

[Title of Court and Cause.]

Certificate of Commissioner.

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of Queenstown, Cork County, Ireland, Consulate of the United States of America at Cork and Queenstown, Ireland, } ss:

I, Daniel Swiney, consul of the United States of America at Cork and Queenstown, Ireland, in the Kingdom of Great Britain and Ireland, the duly appointed commissioner in the above-entitled suit and named in the commission hereto annexed do
1425 hereby certify that after receiving said commission I duly qualified as such commissioner by taking an oath, duly administered, that I would faithfully perform the duties of such commission to the best of my ability. On the day fixed for the taking of depositions to begin, viz., November 15th, 1901, at 10 o'clock a. m. at the consulate of the United States at Queenstown and pursuant to a notice duly given, I was attended by James B. Howe, one of the solicitors for complainants, and by no one in behalf of the defendants, and thereupon Edward Corcoran, a witness in behalf of com-

plainants, having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth, gave his testimony appearing in the annexed deposition as given on said 15th day of November, 1901, which said testimony was reduced to writing by me, and on motion of the solicitor for complainants the taking of said depositions was then adjourned until 10 o'clock a. m., November 18th, 1901, at said consulate at Queenstown, Ireland. At 10 o'clock a. m., November 18th, 1901, at said consulate, pursuant to said adjournment, the taking of depositions in behalf of complainants was resumed, and on said day I was attended by James B. Howe, Esq., and Arthur Julian, Esq., as solicitors for complainants, by C. A. Riddle, Esq., solicitor for Terence O'Brien, as administrator of the estate of John Sullivan, deceased, and by H. P. F. Donegan, Esq., as solicitor for defendant Marie Carrau; by Alfred Blake, Esq., solicitor for the Riordan claimants who appeared under the stipulation a copy of which is hereto annexed, and by Eugene F. Collins, Esq., solicitor for Mary Sul-
1426 livan, who appeared under the said stipulation. With the consent of all parties I appointed Mr. M. B. O'Niell, a disinterested person, official stenographer, to take and transcribe the testimony of the witnesses produced and examined, and to report the proceedings occurring in the progress of such examination. Mr. O'Niell was by me first duly sworn to faithfully discharge the duties of a stenographer. He reported the proceedings and wrote down and transcribed the evidence of the witnesses examined on November 18th and 19th, 1901. Adjournments were had from November 15th, 1901, to November 18th, 1901, and from November 18th, 1901, to November 19th, 1901, and from November 19th, 1901, to November 22d, 1901, and from November 22d, 1901, to November 25th, 1901, and from November 25th, 1901, to November 26th, 1901, and from November 26th, 1901, to November 27th, 1901, and from November 27th, 1901, to November 28th, 1901, and from November 28th, 1901, to December 7th, 1901, at which time, by consent of all parties taking testimony, the commission was closed and I annex hereto the written consent to the closing of the commission. On November 25th, 1901, with the consent of all parties, I appointed Miss Maud McKensie, a disinterested person, official stenographer, to take and transcribe the testimony of the witnesses produced and examined, and to report the proceedings occurring in the progress of such examination. Miss McKenzie was by me first duly sworn to faithfully discharge the duties of stenographer. She reported the proceedings occurring after November 22d, 1901, and wrote down and transcribed the testimony of all witnesses examined after November 22d, 1901. The following
1427 named, pursuant to notice duly given, were produced, cautioned, sworn and examined in behalf of complainants, to wit, at Queenstown, Edward Corcoran, of Dublin, Hannah Callaghan of Cork, Rev'd John A. Daly of Cork, Elizabeth Cowig or Cowlig of Cork, Denis Riordan of Cork, Ellen B. Davidson of Cork, Rev. Canon

Carey of Cork county, Denis Murphy of Cork, Patrick Buckley of Cork, Michael Power or Powell of Cork county, Mary Mahony of Cork county, Michael Cooney of Cork county, John Hilliard of Cork county, Mary Jenkins of Cork, Catherine Riordan, Mary Riordan of Cork, Margaret McGrath of Cork, Daniel Burke of Cork.

Their testimony was, by consent of all parties, taken down in shorthand by said M. B. O'Niell, and all proceedings in connection with the examination of said witnesses were likewise taken down in shorthand by said M. B. O'Niell, and the said testimony of each of said witnesses and the proceedings had in connection therewith, were by him transcribed in typewriting, and the transcript thereof is hereto annexed. The following named witnesses pursuant to notice duly given were produced, cautioned, sworn and examined, in behalf of the complainants, to wit: at Cork: Mary Davidson (now O'Leary) of Cork, Catherine Murphy of Cork, Norah O'Connell of Cork, R. W. Wolseley of Cork, Norah Kiely of Cork, Rev. James Fleming of Cork, Bridget Cronin of Cork, Margaret Cronin of Cork, Robert Gregg of Cork, Michael Regan of Cork. Their testimony was, by consent of all parties, taken down in shorthand by said Maud
1428 McKensie, together with all proceedings connected with said testimony and the said proceedings and testimony were transcribed in typewriting by the said Maud McKensie and the transcript thereof is hereto annexed.

The following named witnesses were produced, cautioned, examined and sworn, and then testified in behalf of the defendant Marie Carrau, to wit at Cork: Henry Carr Cave, Cork, Rev. Canon Carey of Cork county, their testimony and the proceedings had in connection therewith by consent of all parties were taken down by said Maud McKensie, and by her transcribed in typewriting, and the transcript thereof is hereto annexed.

The following named witnesses are produced, examined, cautioned and sworn, and then testified in behalf of the Riordan claimants at Cork, under the stipulation above mentioned, to wit, Ellen Begley of Cork, Margaret Riordan of Cork.

No witness other than those above mentioned was sworn and examined. I do also further certify that the annexed transcript is a true and correct transcript of the testimony given by the witnesses examined before me, in the foregoing entitled suit, and that the said transcript contains all the testimony which was given before me, and it shows all the proceedings which were had before me in connection with the giving of said testimony by said witnesses. Complainants' Exhibits "A" to "X," both inclusive, were offered in evidence by complainants, and each exhibit is endorsed with the name of the witness testifying to the same, and also with my name, and said exhibits are annexed to said transcript.

Exhibits of Marie Carrau "A" to "D," both inclusive,
1429 were offered in evidence by Marie Carrau, the same are identified by having written thereon the name of the witness tes-

tifying to said exhibits, and also by my name written thereon, and said exhibits are attached to said transcript.

Exhibits 1 to 10 were offered in evidence by the Riordan claimants under the stipulation above referred to, and the same are identified by the name of the witness testifying to such exhibit-, and by my name being also endorsed thereon, and said exhibits are attached to said transcript.

I do also further certify that all parties taking testimony in my presence at the time of the completion of each witness' testimony expressly waived the signature of each and every witness, being written upon the transcript of such testimony, and also expressly waived the signing of such testimony by and the reading over of such testimony to any and all witnesses, and also consented in the foregoing suit and under the said stipulation that I should certify the transcript of said evidence hereto attached and the transcript of the proceedings had in connection with the taking of said testimony, as the deposition of each of said witnesses and as the proceedings had before me in connection with the taking of said depositions, and I do further certify that the annexed transcript is the true and correct transcript of the stenographic notes of the testimony of each and every witness examined before me under the commission hereto annexed, and under said stipulation and each and every witness examined before me did depose and swear as set forth in the deposition of such witness hereto attached; and
1430 the proceedings set forth in the transcript hereto attached as occurring in connection with the examination of said witnesses are truly and correctly set forth in said transcript, and the exhibits attached to said depositions are all the exhibits offered in evidence before me. I do further certify that I am not and was not of counsel nor am I attorney, or solicitor for any party named in said commission, or for any party to said stipulation nor am I interested in the event of the foregoing suit named in said commission.

In testimony thereof I have hereunto set my hand and affixed my official seal this 7th day of December, 1901, at which time all parties consented to the closing of said commission, and to my authenticating the transcript hereto attached.

[Seal U. S. Consulate.]

DANIEL SWINEY,
Consul of United States of America at Cork and Queenstown, Ireland, and Commissioner Named in the Annexed Commission.

A colloquy having taken place between counsel during Han-ah Callaghan's examination, Mr. Howe has furnished a statement of his recollection of what occurred. If Mr. Donegan furnishes a statement of his recollection I am to make a statement of mine and

the three statements will be forwarded by me, if made, to the clerk of the court as a supplement to this commission.

DANIEL SWINEY,
Commissioner.

1431 Received and filed in the United States circuit court, district of Washington, December 28, 1901.

A. REEVES AYRES, *Clerk.*
H. M. WALTHEW, *Deputy.*

[Duly filed April 4, 1902.]

[Title of Court and Cause.]

Clerk's Certificate to Transcript.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I, A. Reeves Ayres, clerk of the circuit court of the United States for the district of Washington, do hereby certify the foregoing three hundred and forty-four (344) typewritten pages, numbered from 1 to 344, inclusive, to be full, true and correct copies of all depositions taken and exhibits introduced in evidence, before Daniel Swiney, Esq., United States consul at Cork and Queenstown, and special commissioner appointed in and by the commission to take such depositions issued out of the above entitled court in this cause, as such depositions and exhibits were returned to and filed in this court by said commissioner, and as the same now remain on file and of record in my office at Seattle in the northern division of the district of Washington.

I further certify that the foregoing depositions and proofs are the depositions and proofs mentioned and referred to in my certificate to volume I of this record on appeal as being contained in volume III thereof, and that the foregoing are a part of the record on appeal in this cause.

1432 In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, this 11th day of December, 1902.

[SEAL.] A. REEVES AYRES, *Clerk,*
By R. M. HOPKINS,
Deputy Clerk.

[Endorsed:] No. 925. In the United States circuit court of appeals for the ninth circuit. Marie Carrau, appellant, *vs.* Hannah O'Callaghan, otherwise known as Johanna Callaghan, and Edward Corcoran, appellees. Transcript of record. Upon appeal from the United States circuit court for the district of Washington, northern division. Filed December 15, 1902. F. D. Monckton, clerk.

1433 *Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.*

1434 & 1435 At a stated term, to wit: the October term A. D. 1902 of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday the ninth day of February in the year of our Lord one thousand, nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge, Honorable Erskine M. Ross, circuit judge, Honorable William W. Morrow, circuit judge.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as JOHANNA Callaghan, and Edward Corcoran, Appellees. } No. 925.

Order of Submission.

Ordered, appeal argued by J. W. Robinson, Esquire, counsel for the appellant, and James B. Howe, Esquire, counsel for the appellees and submitted to the court for consideration and decision, with leave to counsel for the appellant to file a reply-brief.

1436 In the United States Circuit Court of Appeals for the Ninth Circuit.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLIGAN and EDWARD CORCORAN, Appellees. } No. 925.

Upon appeal from the United States circuit court for the district of Washington, northern division.

Before Gilbert, Ross, and Morrow, circuit judges.

The appellees were complainants in the court below in a suit to which Terrence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, were made defendants. In their bill, after alleging the complainants to be British subjects, and the defendants to be citizens of the United States and residents of the State of Washington, and the defendant Terrence O'Brien to be the duly appointed, qualified, and acting administrator of the estate of the deceased Sullivan, they averred that on the 26th day of September, 1900, Sullivan died in the city of Seattle, State of Washington, intestate, leaving therein real property of the value of over four hundred thousand dollars, and personal property of the value of more

than twenty thousand dollars; that Sullivan left surviving him no widow, children, or lineal descendants, nor father, mother, sister,
1437 brother, uncle, aunt, nephew, niece, nor any granduncle nor grandaunt, nor any grandnephew or grandniece, nor any ancestor, lineal, or collateral, nor any first cousins other than the complainants, nor any relative whomsoever as nearly related to him as the complainants; that each of the complainants is a first cousin of the deceased Sullivan, and that they are his only heirs at law and next of kin; that shortly after Sullivan's death, a special administrator of his estate was appointed by the superior court of King county, Washington, who took charge of the estate until some time in November, 1900, when the defendant O'Brien was by that court duly appointed general administrator of the estate; that O'Brien immediately qualified as such administrator and entered upon the discharge of his duties as such; that the defendant Marie Carrau and a relative of hers by the name of Louis Daussat, shortly after the appointment of the special administrator of the estate of Sullivan, filed a petition in the superior court of King county, wherein they alleged that Sullivan died in that county without leaving any will, and seized of an estate in the county consisting of real and personal property, exceeding in value the sum of four hundred thousand dollars, and claiming that Sullivan was indebted to them in about thirty-five dollars for board, and as such creditors they prayed that one I. D. McCutcheon be appointed administrator of the estate; that various other persons, some of whom are named in the bill, filed petitions alleging that Sullivan died seized and possessed of real and personal property in King county, that he left no will, and praying the appointment of other persons than McCutcheon as administrator of the estate; that the several petitions came
1438 on for hearing before the court, and at such hearing McCutcheon declined to be appointed administrator, and at the request and in behalf of Daussat and Marie Carrau, asked the appointment of one B. R. Brierly as such administrator; that upon the hearing of the proofs offered in support of the various petitions the superior court of King county appointed the defendant Terrence O'Brien administrator of the estate, and denied the prayers of all the other petitions; that after the appointment and qualification of O'Brien as such administrator, the defendant Marie Carrau, and Louis Daussat, and their relatives, Augustine Daussat and Hermance Carrau, combined and confederated together for the purpose of manufacturing a pretended nuncupative will of Sullivan in favor of Marie Carrau, under which pretended nuncupative will Marie Carrau is claiming to be the sole legatee and devisee of all the property of the deceased Sullivan, and that it is and has been the intention of the said Marie Carrau, Hermance Carrau, Louis Daussat, and Augustine Daussat, to carry out such conspiracy, and thereby obtain for themselves all the property of Sullivan by means of false testimony, and by the manufacture of evidence to support the pretended nuncupative will; that Sullivan at the time of his death was a bach-

elor, of the age of sixty years, and had had only a very short acquaintance with Marie Carrau, Hermance Carrau, Louis Daussat, and Augustine Daussat, but that at the time of his death he was temporarily lodging at the house of Daussat, at which house Marie Carrau also resided, and at which time she was teaching Sullivan French, he then contemplating a trip to France, from which country he had but recently returned with the intention of revisiting it at an early date; that after failing to procure the appointment of the person whom they had nominated as admin-
1439 istrator, the said Louis Daussat and Marie Carrau began to circulate reports that Sullivan had made a nuncupative will at eleven o'clock on the night of the 25th day of September, 1900; that such pretended nuncupative will had been reduced to writing at half past eleven o'clock that night, and had been signed by the said Marie Carrau, Louis Daussat, Augustine Daussat, and Hermance Carrau as witnesses after the death of Sullivan on the 26th day of September, 1900; that on the 8th day of March, 1901, the said Marie Carrau filed in the superior court of King county, Washington, a verified petition wherein she stated that she had heard the said petition read, knew the contents thereof, and knew the same to be true, which petition alleged "that said John Sullivan died on the 26th day of September, A. D. 1900, at Seattle, county of King, State of Washington, and was at the time of his death of sound mind and disposing memory; that he left a last will and testament, to-wit, a nuncupative will; that six months have not elapsed since the testamentary words were spoken by decedent; that said testamentary words, or the substance thereof, were addressed to Louis Daussat, Augustine Daussat, and Hermance Carrau, at about eleven o'clock p. m. of the 25th day of September, 1900, and were as follows: 'I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick and we know not what may happen;' that said testamentary words were thereafter reduced to writing, which said writing accompanies this petition; that such testamentary words were spoken and such nuncupative will was made at the time of the last sickness and at the dwelling house of deceased; wherein deceased had resided
1440 for more than ten days immediately preceding his death, and the speaking of said words; that said will was made at or about the hour of eleven o'clock p. m. on the 25th day of September, 1900, the night before decedent's death, and at the time of his last sickness, and while decedent was in actual contemplation, expectation, and fear of death and at the time of pronouncing such testamentary words constituting such nuncupative will as aforesaid, the decedent did bid the three following named persons, who were then and there present by and at his request, to bear witness that such was his will, to-wit: Louis Daussat, Augustine Daussat, Hermance Carrau; that decedent had been sick for several days immediately preceding the making of said will, and was still sick at said

time, and in his last sickness as aforesaid, and died within twelve hours after said will was made, published, and declared; that no one was named in said will as the executor thereof; that decedent was a bachelor and left no widow, heirs, or next of kin so far as known to your petitioner; that decedent left personal property of the value of fifty thousand dollars ($50,000) and real estate in said county of King of the probable value of four hundred and fifty thousand dollars ($450,000). Wherefore, petitioner prays that said will be admitted to probate. (Signed) Marie Carrau, proponer and petitioner."

The bill further alleges that immediately upon the filing of that petition a citation was issued by order of the superior court of King county, Washington, and placed in the hands of the sheriff of that county for service upon the widow and next of kin of the deceased Sullivan, and that the sheriff immediately returned the citation with his return endorsed thereon to the effect that he was unable to find such persons or any of them in King county, and immediately
1441 thereupon the superior court of King county assumed to admit the pretended nuncupative will to probate, and that said pretended nuncupative will now stands as legally probated in the records of the superior court of King county, State of Washington; that the said superior court in assuming to probate the said nuncupative will acted wholly without jurisdiction in the premises; that it was without jurisdiction to hear any evidence or to take any steps for the probate of such nuncupative will wherein the estate bequeathed exceeded the value of two hundred dollars; that the said superior court was also without jurisdiction for the reason that no legal citation had been issued out of the court, and because ten days had not elapsed between the filing of the pretended will and the hearing of the pretended proof offered in its support; that under the laws of the State of Washington a nuncupative will is invalid where the estate bequeathed exceeds the value of two hundred dollars, and that a nuncupative will, even if valid, cannot dispose of real estate; that the said Marie Carrau has filed a petition in the superior court of King county, Washington, wherein she prays that the whole of the estate of the deceased Sullivan be distributed to her, and it is alleged upon the information and belief of the complainants, that the said court will, on the 21st day of June, 1901, make and enter a decree of distribution distributing the whole of the estate to said Marie Carrau upon her executing a bond for the payment of her proportion of the indebtedness of the estate; that the estate is very slightly indebted except in the sum of sixty thousand dollars to the United States Mortgage and Trust Company, secured by mortgage upon the property known as the Sullivan block in Seattle, which, with the land upon which it is erected, is of the value
1442 of upwards of three hundred thousand dollars, and that the administrator of the estate, unless restrained by the court below, will surrender to said Marie Carrau all of the property of the said estate, who will appropriate the same to her own use and bene-

fit, including the rents, issues, and profits of the real estate, amounting to twenty-five thousand dollars a year, all of which will be lost to the complainants because of the insolvency of the defendant Marie Carrau.

The prayer of the bill is, among other things, for a decree adjudging the pretended nuncupative will null and void; that the complainants are the only heirs at law of the deceased Sullivan, and entitled to receive the whole of his estate, and that the defendant, Terrence O'Brien, as administrator of the estate, be enjoined from turning over any of the property to the defendant Marie Carrau, or to any other person or persons than the complainants.

The answer of the defendant, Terrence O'Brien, administrator of the estate, is to the effect that he has no knowledge concerning any of the matters stated in the bill, and that he has no interest in the controversy except such as he, as administrator, is by law required to have.

The answer of Marie Carrau, among other things, denies any relationship of either of the complainants with the deceased Sullivan, admits the relationship as alleged of the defendant Marie Carrau, Louis Daussat, Augustine Daussat, and Hermance Carrau, but denies that they or either of them combined or confederated together for the purpose of making a pretended nuncupative will of the deceased Sullivan in favor of the defendant Marie Carrau. The answer of this defendant puts in issue all of the averments of the bill in respect to fraud and conspiracy, and sets up that Sul-
1443 livan was engaged to be married to her, and that they were to have been married on the first day of October, 1900; that Sullivan did make and publish the nuncupative will in question, by which he devised to her all of his property, which will was duly admitted to probate by the probate court of King county, Washington; denies that either the defendant Marie Carrau or Louis Daussat ever sought the appointment of any one as administrator of the estate of the deceased, or ever circulated the reports alleged in the bill, and alleges that immediately after the death of Sullivan the defendant Marie Carrau informed "her spiritual adviser" that Sullivan did make and publish an oral will devising and granting to her all of his property, and that she never attempted to conceal the fact of the making and publishing of such a will; that she caused to be consulted a regular practicing attorney in Seattle in respect to the validity of such will, and was by him advised that an oral will was not valid under the laws of the State of Washington; that it was not until several weeks thereafter that she was advised of the fact that the law of that State did authorize the making of a verbal will, and that the will so alleged by her to be made by the deceased was valid and that the same devised his entire estate to her. The answer of the defendant Marie Carrau also denies that the superior court of King county, Washington, acted wholly or at all without jurisdiction in probating the alleged nuncupative will, but, on the contrary, alleges that it had and has the exclusive jurisdic-

tion in the premises. The answer of this defendant also sets up lack of jurisdiction in the court below over the subject matter of the present suit and denies that under the laws of the State of Washington a nuncupative will is invalid in respect to its attempted disposition of real property, or is invalid where the estate ex-
1444 ceeds the value of two hundred dollars, but alleges that such a will, duly proved and probated, devises, under the laws of that State, both real and personal property to any amount in value, by virtue of a statute of the State reading as follows:

"No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator at the time of pronouncing the same did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return." (Ballinger's Code, volume 1, section 4605.)

The answer of the defendant Marie Carrau further sets forth the various steps taken in the superior court of King county, Washington, sitting as a court of probate in the matter of the estate of the deceased Sullivan, including the averment "That a large number of persons have filed, *in re* estate of John Sullivan, deceased, in the superior court of the State of Washington, for King county, their verified claims claiming and alleging each of them to be the sole heir of said John Sullivan, deceased, as follows, to-wit:

"Eugene Timothy Sullivan, residing at Olympia, Washington, in person on his own behalf, on September 3, 1901.

"Mary Sullivan, Butte, Montana, by Peter Breen, Alexander Mackel, and James A. Bradford, her attorneys, on March 12, 1900.

"Katherine Riordan, Mary Riordan, and Margaret McGrath, (*née* Margaret Riordan) Cork, Ireland, by John B. Ault, June 19, 1901.

1445 "John Sullivan and Mary Sullivan, residing in Cork, Ireland, by Roberts & Leehey and J. P. Gleason, their attorneys, April 3, 1901.

"Jeremiah Sullivan, James Sullivan, Margaret Mahoney, Catherine Sweeney (spinster), John Sweeney, Patrick Sweeney, Daniel Sweeney, and Michael Sweeney, residing in Ireland, by Wilshire & Kenaga, their attorneys."

The answer of the defendant Marie Carrau also sets up that prior to the commencement of the present suit, the complainants herein did "file their verified petition in equity and appearing by Piles, Donworth & Howe, and C. H. Farrell, their attorneys, who are also complainants' solicitors here, contesting the nuncupative will in the complaint and defendant's answer described, and which petition was duly filed in the superior court of the State of Washington, for King county, being No. 32,664, and entitled 'In the matter of the estate

of John Sullivan, deceased, Johanna Callighan and Edward Corcoran, petitioners, *vs.* Terrence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, respondents,' and caused to be issued a citation therein, under the seal of said superior court for King county, Washington, to the respondents therein, being the defendants herein, and caused said citation to be regularly served on respondents therein and these defendants, on the same day; and that this defendant and said administrator have each appeared in said action resisting said contest, and said action so as aforesaid, contesting the validity of said will, was pending at the time of the bringing of this action, and is still pending, in said superior court of King county, Washington, undetermined. And that the following named persons have also filed petitions *in re* the estate of
1446 John Sullivan, deceased, in the superior court of the State of Washington, for King county, to contest the validity of said will, to-wit:

"Catherine Riordan, Mary Riordan, and Margaret McGrath (*née* Margaret Riordan) filed June 20th, 1901, by their attorney John B. Ault, and which are still pending in said court.

"The State of Washington, by its attorney-general, filed the 20th day of June, 1901, and which is still pending in said court.

"Mary Sullivan, by James E. Bradford, her attorney, filed July 2d, 1901, which is still pending in said court.

"And that each of said petitioners have caused citations to issue and be served upon said O'Brien, as administrator, and this answering defendant as such legatee, under said will; and that each of said petitions so as aforesaid contesting the validity of said nuncupative will, are still pending, undetermined in the superior court of the State of Washington, for King county; and that this answering defendant in each of said actions contesting the validity of said will, is defending said will and her rights thereunder."

The complainants filed a replication to the answer of the defendant Marie Carrau, evidence was taken upon the issues made, the cause was thereafter argued and submitted upon the pleadings and briefs, on consideration of which the court below, "adjudged and decreed as follows, to-wit:

"1. That John Sullivan, aged about sixty (60) years, late of the city of Seattle, King county, State of Washington, died in said city on the 26th day of September, 1900, intestate, the owner of personal property and real estate situated in said county, including the property known as the Sullivan building, and leaving no issue, nor any descendant, nor wife, nor father, nor mother, nor sister, nor
1447 brother, nor uncle, nor aunt, nor granduncle, nor grandaunt, nor ancestor lineal or collateral, nor any person of nearer kin than first cousin, and never having married; but leaving surviving him the complainant Hannah O'Callaghan, otherwise known as Johanna Callaghan, of Cork, Ireland, his first cousin and one of his next of kin, a lawful child of his mother's deceased sister, Bridget Callaghan, and also leaving surviving him his first cousin and one

of his next of kin in equal degree with said Johanna Callaghan, the other complainant, Edward Corcoran, otherwise known as Ned Corcoran, of Dublin, Ireland, a lawful child of Margaret Corcoran, a deceased sister of the mother of said John Sullivan.

"2. It is further ordered, adjudged, and decreed that on November 19, 1900, the defendant Terrence O'Brien, a citizen of the United States and of the State of Washington was, by the superior court of the State of Washington for King county, in the matter of the estate of John Sullivan, deceased, numbered in said court 3664, duly papointed as administrator of the estate of said John Sullivan, deceased and ever since his said appointment he has been and now is the duly qualified and acting administrator of said estate.

"3. It is further ordered, adjudged, and decreed that the alleged nuncupative will claimed by the defendant Marie Carrau, a citizen of the United States and of the State of Washington, to have been made by the said John Sullivan on the 25th day of September, 1900, at about eleven o'clock p. m. in the following words; to-wit: 'I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick and we
1448 know not what might happen,' was never made by said John Sullivan, nor did the said John Sullivan speak said words, or any of them, or any words of such import, nor did he make any will whatever.

"4. It is further ordered, adjudged, and decreed that the superior court of the State of Washington, for King county, never acquired jurisdiction to probate said alleged nuncupative will. Said court never made any lawful order for the issuance of a citation, nor was any lawful citation ever issued, nor was any notice of any proceeding to probate said alleged will ever given to or had by any one nor did said court ever acquire jurisdiction to hear any evidence for the probate of said alleged will, but said court acted wholly without jurisdiction in the matter of the probate of said alleged will, and the certificate of probate of said alleged will granted by said court on the 8th day of March, 1901, and the decree of said court purporting to have beenrendered and entered on said 8th day of March, 1901, admitting said alleged will to probate as the last will and testament of said John Sullivan, deceased, were made and rendered wholly without jurisdiction, and said proceedings and all proceedings in the matter in said superior court numbered 3664, entitled 'In the matter of the estate of John Sullivan, deceased, insofar as they relate to the alleged probate of said alleged nuncupative will, are null and void and of no force and effect.

"5. It is further ordered, adjudged, and decreed that the complainants Johanna Callaghan and Edward Corcoran were at the time of the commencement of this action and now are aliens, subjects of the King of Great Britain and Ireland, and first cousins and next of kin of said John Sullivan, deceased, and are entitled to share

equally in the assets of the estate of said John Sullivan, de-
1449 ceased, as his first cousins and next of kin, and the share of each of said complainants in said estate exceeds and at the time of the commencement of this suit exceeded the sum and value of two thousand dollars ($2000), exclusive of interest and costs, and the value of said estate has at all times exceeded and now exceeds the sum of three hundred thousand dollars ($300,000), exclusive of interest and costs, and the defendant, Terrence O'Brien as administrator of the estate of said John Sullivan, deceased, is directed to recognize the right of each of said complainants to share in said estate as a first cousin of said deceased and as one of the next of kin of said deceased, John Sullivan.

"6. It is further ordered, adjudged, and decreed that the defendant, Marie Carrau, and all persons claiming under her as representing her in any manner whatever, are hereby perpetually restrained and enjoined from setting up or asserting in any manner whatsoever any claim, right, or title to or interest in the estate of said John Sullivan, deceased, or in any part thereof, under said alleged nuncupative will and under the alleged probate thereof, or under either thereof, and from setting up, asserting, or in any manner whatsoever making any claim whatsoever under said alleged nuncupative will and the alleged probate thereof, or either thereof, in any court or elsewhere except in a court having appellate jurisdiction to review this decree.

"7. It is further ordered, adjudged, and decreed that the complainants recover from the defendant, Marie Carrau, their costs and disbursements in this suit sustained, the same to be taxed by the clerk of this court."

Ross, circuit judge, after stating the case as above, delivered the opinion of the court:

1450 We are of the opinion that the court below was without jurisdiction of the subject matter of the suit, and further, that all necessary parties were not before the court, some of whom, if made parties, would have ousted the court of jurisdiction. On both of these grounds we think the court below should have dismissed the bill at the complainant's cost.

In the case of Broderick's will, 21 Wall. 503, 509, the Supreme Court declared it to be "undoubtedly the general rule, established both in England and this country, that a court of equity will not entertain jurisdiction of a bill to set aside a will or the probate thereof." And the court added: "Whatever may have been the original ground of this rule (perhaps something in the peculiar constitution of the English courts) the most satisfactory ground for its continued prevalence is, that the constitution of a succession to a deceased person's estate partakes, in some degree, of the nature of a proceeding *in rem*, in which all persons in the world who have any interest are deemed parties, and are concluded as upon these *res judicata* by the decision of the court having jurisdiction. The public interest requires that the estates of deceased persons being de-

prived of a master, and subject to all manner of claims, should at once devolve to a new and competent ownership; and, consequently, that there should be some convenient jurisdiction and mode of proceeding by which this devolution may be effected with least chance of injustice and fraud; and that the result attained should be firm and perpetual. The courts invested with this jurisdiction should have ample powers both of process and investigation, and sufficient opportunity should be given to check and revise proceedings tainted with mistake, fraud, or illegality. These objects are gen-
1451 erally accomplished by the Constitution and powers which are given to the probate courts, and the modes provided for reviewing their proceedings. And one of the principal reasons assigned by the equity courts for not entertaining bills on questions of probate is that the probate courts themselves have all the powers and machinery necessary to give full and adequate relief."

But wherever, by the law, obtaining in a State, customary or statutory suits in equity may be maintained in the courts of such State to set aside the probate of the will, similar suits may be maintained by original process in a Federal court, where the requisite diverse citizenship and other requisite conditions exist. Thus, in the case of Richardson, *et al. v.* Green, *et al.*, so much relied upon by counsel for the appellees, (61 Fed., Rep. 423,) decided in this court by Judges Knowles and McKenna, the latter now an associate justice of the Supreme Court, and which was a suit brought in the circuit court of the United States for the district of Oregon, for the purpose, in part, of obtaining a decree annulling the probate of a certain will that had been theretofore probated in one of the county courts of that State, on the ground that the probated will was a forgery, this court affirmed the decree of the lower court which cancelled the will; thus sustaining the jurisdiction of the Federal courts in the matter: but it did so for the reason, as plainly appears from the opinions of the judges deciding the case that it was found that, while under the laws of Oregon the county courts of that State were given exclusive jurisdiction in the first instance to take proof of wills, there was no provision of the Oregon law "to warrant any con-
test upon the validity of a will at the time the same was
1452 being probated," but authority in any one interested in the estate to attack the will by an independent suit at any time after its probate. This court having found that such a remedy existed in the Oregon courts, very properly held that it should be exercised by the United States circuit court for that State the requisite diverse citizenship and other requisite conditions existing.

But the laws of the State of Washington in respect to the probate of wills and their contest are quite different. By section 6 of article IV of the constitution of that State the superior courts of the State are given original jurisdiction "of all matters of probate," as well as of all cases in equity and of all cases at law not specially excepted. And by a statute of the State it is provided that "the

superior courts in the exercise of their jurisdiction in matters of probate shall have power:

"1. To take proof of wills and to grant letters testamentary and of administration * * *;

"2. To settle the estates of deceased persons, and the accounts of executors, administrators, and guardians;

"3. To allow or reject claims against the estates of deceased persons, as hereinafter provided;

* * * * * * *

"5. To award process and cause to come before them all persons whom they may deem it necessary to summon, whether parties or witnesses, or who, as executors, administrators, or guardians, or otherwise, shall be entrusted with or in any way accountable for any property belonging to any minor, orphan, or person of unsound mind, or estate of any deceased person;

"6. To order and cause to be issued all writs which may be necessary to the exercise of their jurisdiction." Hill's Anno-
1453 tated Statutes and Codes of Washington, vol. 2, section 845.

By section 851 of the same statutes, it is provided that:

"Wills shall be proved and letters testamentary or of administration shall be granted:

"1. In the county of which deceased was a resident or had his place of abode at the time of his death;

"2. In the county in which he may have died, leaving estate therein and not being a resident of the State.

"3. In the county in which any part of his estate may be, he having died out of the State, and not having been a resident thereof at the time of his death."

Various provisions follow concerning the production of and petition for the probate of wills, and among them section 861, which provides that:

"Applications for the probate of a will or for letters testamentary, may be made to the judge of the superior court and he may also at any time issue all necessary orders and process to enforce the production of any will."

By section 862 of the same statutes it is provided that:

"When any will is exhibited to be proven the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, issue a certificate of rejection."

Section 867 is as follows:

"All the testimony adduced in support of the will shall be reduced to writing, signed by the witnesses and certified by the judge of the court;" and the next section provides recordation, in a book to be kept for that purpose, of all wills admitted to probate.

Section 872 of the same statutes is as follows:

"If any person interested in any will shall appear within
1454 one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction, contest the

validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections, and exceptions to said will or to the rejection thereof. Issues shall be made up, tried, and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will."

The next section—873—provides that:

"Upon the filing of the petition referred to in the next preceding section a citation shall be issued to the executors who have taken upon them the execution of the will or to the administrator with the will annexed, and to all legatees named in the will residing in the State or to their guardians if any of them are minors, or to their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted."

By section 874 it is declared that:

"If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save — to infants, married women, persons absent from the United States or of unsound mind, a period of one year after their respective disabilities are removed."

By section 876 it is provided that:

"If, upon the trial of said issue, it shall be decided that the
1455 will is for any reason invalid or that it is not sufficiently proved to have been the last will of the testator, the will and the probate thereof shall be annulled and revoked."

It is thus seen that by the statutes of the State of Washington, provision is expressly made for the contest, within a stated time, of any will theretofore admitted to probate, for any cause affecting the validity of the will, by petition to the superior court having jurisdiction, in which contest issues are required to be made up, tried, and determined in that court, with a provision to the effect, that if no person shall so appear within the time limited, the probate of such will shall be binding. And such we understand to be the effect of the decision of the supreme court of Washington in the case of State *ex rel.* Stratton, attorney general, *vs.* Tallman, judge of the superior court, 65 Pac. Rep. 545, concerning this very estate of Sullivan, it appears from the opinion of the court in that case, that the attorney general of the State filed a motion in the superior court having jurisdiction of the estate in question "praying for the vacation of the order admitting the will to probate, and to set aside all the proceedings leading up to the probate of the will, upon the grounds that the court acquired no jurisdiction to hear any evidence in support of the will, because no citation was issued as required by law, because the citation was issued on the day it bears date and at the time the will was presented to the court, and immediately returned by the sheriff without making any effort to find any of the heirs of deceased, or any person interested in the estate, and because

deceased never made or attempted to publish and declare the will."

The probate court having declined to consider or decide the
1456 motion on the ground that the State could not properly appear in the proceedings, the attorney general applied to the supreme court of the State for a mandate directing the probate court to consider and determine the motion; and, in denying the writ, that court said:

"The extraordinary writ will not be issued if relator has a plain, speedy, and adequate remedy at law. Relator urges that under subdivision 8, section 4620, 1 Ballinger's Ann. Codes & St., the State is interested in testing the validity of the will, because, in the event of the establishment of intestacy and upon the failure of heirs, the estate escheats to the State. The effect of the order admitting a will to probate, either written or nuncupative, is declared in section 6108, 2 Ballinger's Ann. Codes & St., 'as effectual in all cases as the original would be if produced and proven,' and such effect by section 6112 is declared binding upon all persons if its validity shall not be contested within one year after the probate or rejection of the will. Assuming that the State may have such contingent interest in the estate as to have the real truth of the existence and validity of the will determined, it appears there is a plain procedure, which is speedy and adequate, pointed out in section 6110, *id.*, by which issues may properly be made up, and tried and determined, respecting all questions affecting the regularity of the execution or of the validity of the will, and the superior court, entertaining such a suit, may fully protect such rights in the estate by such stay of proceedings in the procedure in probate as may be necessary or effective. The conclusion, therefore, is that the appropriate procedure is designated in section 6110, *supra*, and there is no necessity shown for a mandate from this court." (65 Pac.
1457 Rep. 546.)

It is true that the court, in speaking of the contest authorized by section 6110 of Ballinger's Annotated Codes and Statutes, uses the word "suit," which was manifestly an inapt expression; but that the court did not thereby mean that such contest should be by an independent suit in a department of the superior court of the State not charged with the administration of the estate, is very clearly shown by its express declaration to the effect that the appropriate procedure is designated in section 6110 of the State statutes, which in terms declares that such contest shall be initiated "by petition to the superior court having jurisdiction," that is to say, to the superior court having jurisdiction of the estate, in which the required issues shall be made up, tried, and determined, and which court, having such jurisdiction, may direct "such stay of proceedings in the procedure in probate as may be necessary." This, we think, is the plain meaning of the decision of the supreme court of the State in the case of State, *ex rel.* Stratton, attorney general, *vs.* Tallman, judge, *supra*. That court surely did not mean to hold that one department of the superior court of the State could inter-

fere with the due proceedings of a co-ordinate branch of the same court, in the matter of an estate of which it acquired the first, and, indeed, the exclusive jurisdiction, by the filing therein of a petition for the probate of an instrument alleged to be the will of one dying within its jurisdiction and alleged to have left real and personal property therein.

Subsequent to the above decision of the supreme court of the State of Washington, the attorney general of the State moved the
1458 superior court that was administering the estate of the deceased Sullivan, for an order directing citation to issue as prayed in his petition for the contest of said alleged will, which the probate court denied on the ground "that the State of Washington has no right at this time to make said petition contesting said will and file the same, or appear in said matter, and is not a proper party to appear in said probate proceeding to contest said will, or for any purpose whatever." Thereupon the attorney general, on behalf of the State, again applied to the supreme court of the State for a writ of mandate to compel the issuance of such citation. In denying the writ on the ground that the petitioner had a remedy at law by appeal from the action of the probate court, the supreme court of Washington said:

"A number of questions are discussed in the briefs of the respective counsel relating to the power of the attorney general to appear in behalf of the State in such a proceeding as that instituted in the superior court and also as to the right of the State to appear by any one in such a proceeding. It is contended by respondent that the right of the State to assert control of property alleged to have escheated is not an active, but a passive, right, and that while the proper probate court is engaged in determining the legal disposition to be made of the property the State has no right to interfere, but that the assertion of the State's claim becomes active when it has been lawfully determined that there are neither heirs nor legatees. The examination of these questions would involve extended discussion, and it is unnecessary to pass upon them here, for the reason that we think the relator has a remedy at law by appeal." State, *ex rel.* Stratton, attorney general *v.* Tallman, judge, 69 Pac. Rep. 1101.

1459 Here again the supreme court of Washington clearly indicates that the proper court, under the statutes of the State, in which to contest the validity of the will in question, is that department of the superior court exercising probate jurisdiction and having control of the estate in question; for it would hardly have held that the relator had a remedy at law by appeal from the ruling of that court if there was no jurisdiction of his contest in the court in which he was proceeding.

"The powers of the superior court in respect to its probate jurisdiction," said the same court *In re* Alfstad's Estate, 27 Wash. 175, 182, "are the same as they would be if it were in fact a separate probate court. Proceedings in probate matters; in actions in equity,

and at common law, are distinct, and should not be intermingled except in cases specially authorized by law."

It is true that in the subsequent cases of Browder *v.* Phinney, 70 Pac. Rep. 264, and *In re* Murphy's Estate, 70 Pac. Rep. 107, the supreme court of Washington said:

"In this State we have no probate court, properly speaking, as distinguished from the court that entertains jurisdiction of other matters. The court of general jurisdiction also hears and determines probate matters. Matters pertaining to probate are referred to what is called 'probate' procedure, as distinguished from what is denominated 'civil' or 'criminal' procedure. But when the court, sitting in a probate proceeding discovers in a petition the statement of facts which forms the basis of a controversy, we see no reason why it may not settle the issues thereunder when an appearance has been made thereto and then proceed to try it in a proper manner, as any other civil action. The court may re-
1460 quire the proceeding to be separately docketed, if, when the issues are formed, it appears to be such as should be thus docketed. Whether a citation should have issued on the strength of this petition, or not, it is nevertheless true that appellant responded to the citation, and appeared generally by demurrer to the petition, and asked its dismissal simply on the ground that the court could not hear it as a probate proceeding. We think it was not necessary to sustain the demurrer and dismiss the proceeding on that ground. But under our liberal practice as to the form of actions, the petition could be treated as in the nature of a complaint. The issues could be framed thereunder, and the cause tried without requiring another statement of the same facts under some other form or name. If it developed that it was not properly a probate proceeding, it would not be treated as such."

In the case at bar the contest of the will is strictly a probate proceeding, and the proper forum for its determination is, as we think the supreme court of Washington indicated in the two cases above cited relating to this very estate, that department of the superior court having jurisdiction of the estate, and actually engaged in its administration.

We concur in the opinion expressed by the supreme court of California, in the matter of Joseph's Estate, 50 Pac. Rep. 768, that a petition to probate a will is the beginning of a special proceeding, and that "the order admitting the will to probate is not final so long as proceedings may be taken (under the statute) to revoke the probate. In all subsequent stages the contest is but a part of the proceeding to probate the will, and is not a new and distinct
1461 proceeding. The subject matter is the same, and the ultimate issue, to-wit, whether the will in question should stand as probated, is the same."

In our opinion, there is nothing in the case of Gaines *v.* Fuentes, *et al.*, 92 U. S. 10, to sustain the jurisdiction of the Federal court in the present suit. That case came before the Supreme Court of the

United States on writ of error to the supreme court of the State of Louisiana. The action was brought in the second district court of the parish of Orleans, which, under the laws of Louisiana, was invested with jurisdiction over the estates of deceased persons, and of appointments necessary in the course of their administration. In form it was an action to annul an alleged will of one Daniel Clark, the father of the plaintiff in error in the case, and to recall the decree of the court by which it was probated. The complaint, or petition, as it was called, set forth that on the 18th of January, 1855, the plaintiff in error applied to the district court of the parish of Orleans for the probate of the alleged will, and that by decree of the supreme court of the State the alleged will was recognized as the last will of the deceased Clark and was ordered to be recorded as such; that this decree of probate was obtained *ex parte*, and by its terms authorized any person at any time, should he desire to do so, to contest the will and its probate, in a direct action, or as a means of defense by way of answer or exception, whenever the will should be set up as a muniment of title; that the plaintiff in error subsequently commenced several suits against the petitioners in the circuit court of the United States to recover sundry tracts of land and properties of great value, situated in the parish of Orleans and elsewhere, in which they were interested, setting up the alleged will
1462 as probated as a muniment of title, and claiming under the same as instituted heir of the testator; and that the petitioners were unable to contest the validity of the alleged will so long as the decree of probate remained unrecalled. The petitioners then proceeded to set forth the grounds upon which they asked for a revocation of the will, and the recalling of the decree of probate; these being substantially the falsity and insufficiency of the testimony upon which the will was admitted to probate, and the status of the plaintiff in error, incapacitating her to inherit or take by last will from the decedent. A citation having been issued upon the petition, and served upon the plaintiff in error, she applied, in proper form, with a tender of the necessary bond, for removal of the cause to the circuit court of the United States for the district of Louisiana under the twelfth section of the judiciary act of 1789, on the ground that she was a citizen of New York and the petitioners were citizens of Louisiana. The court denied the application, for the alleged reason that, as she had made herself a party to the proceedings in the court relative to the settlement of Clark's succession by appearing for the probate of the will, she could not avoid the jurisdiction when the attempt was made to set aside and annul the order of probate which she had obtained. The court, however, proceeded to say, in its opinion, that the Federal court could not take jurisdiction of a controversy having for its object the annulment of a decree probating a will. The plaintiff in error then applied for the removal of the action on another ground, which was also denied, on the ground that the Federal court could not take jurisdiction of the subject matter of the controversy. Other parties having inter-

vened, the applications were renewed, and again denied. An
1463 answer was then filed by the plaintiff in error, denying generally the allegations of the petition except as to the probate of the will, and interposing a plea of prescription. Subsequently a further plea was filed to the effect that the several matters alleged as to the statuts of the plaintiff in error had been the subject of judicial inquiry in the Federal courts, and had been there adjudged in her favor. Upon the hearing a decree was entered annulling the will, and revoking its probate. The judgment of the supreme court of the State affirming this decree was reversed on writ of error, on the ground that the case should have been transferred from the parish court of Orleans to the circuit court of the United States, and in giving that judgment the Supreme Court of the United States held that while the action was in form to annul the alleged will of Daniel Clark, and to recall the decree by which it was probated, it could not be treated as properly instituted for the revocation of the probate, but should be, and was, treated as brought against the devisee by strangers to the estate to annul the will as a muniment of title, and to restrain the enforcement of the decree by which its validity was established, so far as it affects their property, for the reason that the petitioners were not heirs of Clark, nor legatees, nor next of kin, and did not ask to be substituted in place of the plaintiff in error.

"It is," said the court, "in fact an action between parties; and the question for determination is whether the Federal court can take jurisdiction of an action brought for the object mentioned between citizens of different States, upon its removal from a State court." The court held (92 U. S. 20) that "the suit in the parish court is not a proceeding to establish a will, but to annul it as a muni-
1464 ment of title, and to limit the operation of the decree admitting it to probate. It is, in all essential particulars, a suit for equitable relief,—to cancel an instrument alleged to be void, and to restrain the enforcement of a decree alleged to have been obtained upon false and insufficient testimony. There are no separate equity courts in Louisiana, and suits for special relief of the nature here sought are not there designated suits in equity. But they are none the less essentially such suits; and if by the law obtaining in the State, customary or statutory, they can be maintained in a State court, whatever designation that court may bear, we think they may be maintained by original process in a Federal court, where the parties are, on the one side, citizens of Louisiana, and, on the other, citizens of other States."

Not only was there no statute of Louisiana like that of the State of Washington, requiring the contest of a will admitted to probate to be initiated and prosecuted in the court having jurisdiction of the estate and charged with its administration, but it appears from the statement of the case of Gaines *v.* Fuentes that the decree of probate there sought to be annulled was not only *ex parte*, but that

by its very terms any person was authorized to contest the will and its probate in a direct action.

The case of Byers *v.* McAuley, 149 U. S. 608, involved the estate of Mary McAuley, deceased, who died seized of real estate in the city of Pittsburgh, Pennsylvania, leaving also a large amount of personal property. As respects the latter she died intestate, but she left the following instrument, written and signed by her:

"By request of my dear brother my house on Duquesne way is to be sold at my death and the proceeds to be divided between 'The Home for the Friendless,' and 'The Home for Protestant Destitute Women.'"

1465 That instrument was admitted to probate on the 12th of January, 1886, by the register of Allegheny county, Pennsylvania, as the will of Mary McAuley, and letters of administration *com testamento annexo* upon her estate were issued to Alexander M. Byers. Byers proceeded with the administration of the estate and on January 29th, 1887, he filed in the register's office an account showing his receipts and expenditures, and what balance he had in his hands for distribution, amounting to a large sum of money. The account of Beyers as administrator with the will annexed was examined and allowed by the register and was presented for approval to the orphans' court of Allegheny county, and was by that court, on March 7th, 1887, approved and confirmed, and no exceptions thereto having been filed, the confirmation became absolute. Thereupon, in pursuance of statutory directions, this confirmed account was put upon the audit list of the orphans' court for distribution of the balance shown to be in the administrator's hands, and the court fixed March 29th, 1887, as the day to hear the case. The day before the hearing thus fixed a bill in equity was filed in the circuit court of the United States for the western district of Pennsylvania, by two citizens of Ohio, against the administrator, Byers, and other parties claiming to be interested in the estate, including the two corporations named in the probated instrument. The bill set forth the death of Mary McAuley; that there were two classes of claimants to the estate, to-wit, the first and second cousins of the decedent; that the so-called will was null and void; and that there was a large amount of personal estate in the hands of the administrator, etc. The prayer was that the will and the probate be declared

1466 void and of no effect; that the administrator be enjoined from disposing of the real estate and from collecting the rents therefrom, and that some suitable person be appointed to take charge of it until partition; that a partition of it be had and made to and among the various parties in interest, and that the defendant Byers be directed to make a full, just, and true account of all assets in his hands; that an account be taken of the decedent's debts and funeral expenses, and the surplus distributed among the plaintiff and other parties entitled thereto; and for general relief. To this bill, the administrator, Byers, filed a plea setting up the proceedings in the orphans' court, which plea was overruled by the circuit court.

The case was then put at issue by answer and replication, and resulted in a final decree by the circuit court to the effect that the real estate left by the decedent be distributed equally between the Home for the Friendless, and the Home for Aged Protestant Women, and that the personal estate of the decedent be distributed among the thirteen first cousins of the decedent, to the exclusion of her second cousins.

The Supreme Court held that the circuit court erred in taking any action or making any decree looking to the mere administration of the estate, or attempting to adjudicate the rights of citizens of the State as between themselves, but that as it appeared that the debts of the estate had been paid, and the estate was ready for distribution, but that no adjudication had been made as to the distributees, "in that exigency the circuit court might entertain jurisdiction in favor of all citizens of other States, to determine and award their shares in the estate. Further than that, it was not at liberty to go." (149 U. S. 620.)

1467 But certainly, in order to make such determination, it is essential that all adverse claimants be made parties. In the case of Byers *v.* McAuley it does not appear that any one interested in the estate was absent. There is in the case no suggestion of the absence of any necessary or proper party, and no question of that nature was presented or considered. In the case at bar, however, there were persons not made parties to the suit who claimed to be the sole and exclusive heirs of the deceased, and who, if made parties, would, on the ground of citizenship, oust the Federal court of any jurisdiction in the premises. If any of those claims be well founded, it would, of course, result that the complainants were, therefore, essential parties to the controversy concerning the heirship in question, and we think counsel for the appellees altogether mistaken in saying that there is anything to the contrary in Byers *v.* McAuley, or in the case of Payne *v.* Hook, 7 Wall. 425. The latter was a case as stated by the Supreme Court in Byers *v.* McAuley, "of a bill filed by one of the distributees of an estate against the administrator and the sureties on his official bond, to obtain her distributive share in the estate of the decedent. Plaintiff was a citizen of Virginia, and the defendant a citizen of Missouri, and an administrator appointed by the probate court of one of its counties. Suit was brought in the circuit court of the United States for the district of Missouri. The charge in the bill was gross misconduct on the part of the administrator, and false settlement with the probate court; and that he had, by fraudulent misrepresentations, obtained a settlement with plaintiff for a sum less than she was entitled to. A demurrer to the bill

1468 was sustained in the court below, but this court held that the bill was sufficient, and that the demurrer was improperly sustained. In other words, the ruling was that the plaintiff, a citizen of another State, could apply to the Federal courts to enforce her claim against an administrator arising out of his wrongful ad-

ministration of the estate." To the objection that the other distributees were not made parties, the court said (7 Wall., 431): "It is undoubtedly true that all persons materially interested in the subject matter of a suit should be made parties to it; but this rule, like all general rules, being founded in convenience, will yield whenever it is necessary that it should yield in order to accomplish the ends of justice. It will yield, if the court is able to proceed to a decree, and do justice to the parties before it without injury to absent persons, equally interested in the litigation, but who cannot conveniently be made parties to the suit. The necessity for the relaxation of the rule is more especially apparent in the courts of the United States, where, oftentimes, the enforcement of the rule would oust them of their jurisdiction, and deprive parties entitled to the interposition of a court of equity of any remedy whatever. The present case affords an ample illustration of this necessity. The complainant sues as one of the next of kin, and names the other distributees, who have the same common interest, without stating of what particular State they are citizens. It is fair to presume, in the absence of any averments to the contrary, that they are citizens of Missouri. If so, they could not be joined as plaintiffs, for that would take away the jurisdiction of the court; and why make them defendants, when the controversy is not with them, but the administrator and his sureties? It can never be indispensable to make defendants of those against whom nothing is alleged and from
1469 whom no relief is asked. A court of equity adapts its decrees to the necessities of each case, and should the present suit terminate in a decree against the defendants, it is easy to do substantial justice to all the parties in interest, and prevent a multiplicity of suits, by allowing the other distributees, either through a reference to a master, or by some other proper proceeding, to come in and share in the benefit of the litigation."

It is plain that what is there said by the Supreme Court is no justification whatever for dispensing with parties whose asserted interest is directly opposed to that of the complainants; for the establishment of any right in the latter takes just that much from the absent claimants.

Without reference to the merits of the suit, concerning which we cannot properly indicate any views, it results that the judgment must be, and hereby is, reversed and the cause remanded to the court below, with directions to dismiss the bill at the complainants' cost.

(Endorsed:) Opinion. Filed September 14, 1903. F. D. Monckton, clerk.

1470 United States Circuit Court of Appeals for the Ninth Circuit.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as Johanna Callaghan, and Edward Corcoran, Appellees. } No. 925. Decree.

Appeal from the circuit court of the United States for the district of Washington, northern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Washington, northern division, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby, reversed, with costs, and the cause remanded to the court below, with directions to dismiss the bill at the complainants' cost.

(Endorsed:) Decree. Filed and entered Sept. 14, 1903, F. D. Monckton, clerk.

1471 At a stated term, to wit: the October term A. D. 1903 of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday the ninth day of November in the year of our Lord one thousand, nine hundred and three.

Present: The Honorable William B. Gilbert, circuit judge, Honorable Erskine M. Ross, circuit judge, Honorable William W. Morrow, circuit judge.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as JOHANNA Callaghan, and Edward Corcoran, Appellees. } No. 925.

Order Denying Petition for a Rehearing, etc.

Ordered, petition for a rehearing, heretofore filed herein, denied, and issuance of mandate stayed to and including Monday the 16th instant.

1472 At a stated term, to wit: the October term A. D. 1903 of the United States circuit court of appeals for the ninth circuit, held at the court room, in the city and county of San Francisco, on Monday the sixteenth day of November in the year of our Lord one thousand, nine hundred and three.

Present: The Honorable William W. Morrow, circuit judge, Honorable John J. De Haven, district judge.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as JOHANNA Callaghan, and Edward Corcoran, Appellees. } No. 925.

Order Allowing Appeal to Supreme Court U. S., etc.

Upon motion of Warren Gregory, Esquire, Lorenzo S. B. Sawyer, Esquire, having been heard in opposition, ordered, appeal to the Supreme Court of the United States allowed and supersedeas bond on appeal fixed at the sum of $500,000.00, * the same to be approved by the senior United States circuit judge.

1473 In the United States Circuit Court of Appeals for the Ninth Circuit.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Appellee.

Good cause appearing therefor, it is hereby ordered that the amount of the supersedeas bond herein upon appeal to the Supreme Court of the United States as fixed by the order dated November 16, 1903, be and the same is hereby amended, and said order is hereby amended, so that the amount of said bond shall be fixed at the sum of five thousand (5000) dollars.

WM. W. MORROW,
JOHN J. DE HAVEN, *Judges.*

(Endorsed:) Order amending order fixing bail. Filed, November 17, 1903, F. D. Monckton, clerk.

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*See order filed Nov. 17, 1903, amending this order.
See, also, order filed Dec. 19, 1903.
See, also, order filed Jan'y 25, 1904.

1474 In the United States Circuit Court of Appeals for the Ninth Circuit.

HANNAH O'CALLAGHAN and EDWARD Corcoran, Complainants, Appellants,

v.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellees.

No. 925. Petition for Allowance of Appeal.

The above named appellants, Hannah O'Callaghan and Edward Corcoran, feeling themselves aggrieved by the judgment and decree of the United States circuit court of appeals for the ninth circuit, rendered on the 14th day of September, 1903, reversing the decree of the circuit court of the United States for the district of Washington in said cause, wherein said appellants are complainants and the above named appellees are defendants, and directing said circuit court of the United States for the district of Washington to dismiss the bill of the above named appellants for want of jurisdiction and with costs, do hereby appeal from the said judgment and decree of said United States circuit court of appeals for the ninth circuit, and from the whole thereof to the Supreme Court of the United States. The matter in controversy as to each appellant and the claim of each appellant in said suit and on said appeal exceed one thousand dollars ($1000.00) besides costs, to-wit, the sum of more than one hundred thousand dollars ($100,000.00) each, besides costs. This cause is one in which an appeal exists as a matter of right to the Supreme Court of the United States. A petition for re-hearing was filed in the above entitled cause by the above named appel-
1475 lants within fifteen (15) days after the filing of the opinion therein in said United States circuit court of appeals, and said petition was by said United States circuit court of appeals denied on the 9th day of November, 1903.

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause, and that a transcript of the record and proceedings in said cause, with all things concerning the same, be sent to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herewith filed by the said appellants may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors and Counsel for Appellants.

1476 In the United States Circuit Court of Appeals for the Ninth Circuit.

HANNAH O'CALLAGHAN and EDWARD Corcoran, Complainants, Appellants,
v.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellees.

No. 925. Order Allowing Appeal.

It is hereby ordered that the appeal prayed for by the above named appellants in the above entitled cause to the Supreme Court be and the same is hereby allowed as prayed.

WM. B. GILBERT,
Circuit Judge of the United States for the Ninth Circuit and Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 14 day of December, 1903.

(Endorsed:) Petition for allowance of appeal and order granting appeal. Filed Dec. 19, 1903, F. D. Monckton, clerk.

1477 In the United States Circuit Court of Appeals for the Ninth Circuit.

HANNAH O'CALLAGHAN and EDWARD Corcoran, Complainants, Appellants,
v.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellees.

No. 925. Assignment of Errors.

The above named appellants, Hannah O'Callaghan and Edward Corcoran, in connection with their petition for an appeal herein to the Supreme Court of the United States, present and file herewith their assignment of errors, and allege that the decree entered in the United States circuit court of appeals for the ninth circuit in the above entitled suit on the 14th day of September, 1903, reversing the decree of the circuit court of the United States for the district of Washington in favor of the above named appellants as complainants and against the above named appellees as defendants, for want of jurisdiction in said circuit court, and directing said circuit court to dismiss the bill of complainants with costs, is erroneous in the following respects, to-wit:

1. The decree is erroneous in reversing the decree of the circuit court of the United States for the district of Washington, and directing said circuit court to dismiss the bill for want of jurisdiction, with costs.

2. The decree is erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction of the subject matter of the suit.

1478 3. The decree is erroneous in adjudging that persons not before the circuit court were necessary parties, and if made parties their joinder would oust the circuit court of jurisdiction, and therefore said circuit court could not acquire jurisdiction of said suit.

4. The decree is erroneous in adjudging that the subject matter of the suit was within the exclusive jurisdiction of the superior court of the State of Washington for King county.

5. The decree is erroneous in adjudging that the circuit court of the United States for the district of Washington, had no jurisdiction in equity of the subject matter of the suit.

6. The decree is erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction in equity of the suit for the annulment of a fraudulent nuncupative will and its probate, which was procured by fraud, although the amount involved was sufficient and the requisite diversity of citizenship existed to give said circuit court jurisdiction, and although an equitable proceeding could have been maintained by the same complainants against the same defendants in the courts of the State of Washington exercising general jurisdiction.

7. The organic act of Washington Territory, enacted by Congress and approved March 2nd, 1853, by section 6 provided that every law of the Territory "shall embrace but one subject, and that shall be expressed in the title." The Territory, by the act of 1854, entitled "An act respecting wills," enacted that no nuncupative will shall be valid where the estate bequeathed exceeds two hun-

1479 dred dollars ($200.00), nor unless it be executed in a certain manner. The legislature of the Territory, in an act approved November 11, 1873, entitled "An act defining the jurisdiction and practice in probate courts of Washington Territory," omitted the limitation on the amount of an estate which might be bequeathed by nuncupative will. The decree of the United States circuit court of appeals in this suit is erroneous in holding that the circuit court did not have jurisdiction to entertain a suit in equity to determine that the alleged nuncupative will was invalid because the said act of 1873 and all subsequent acts of said Territory having the same title, in so far as they attempted to repeal the provision of said act of 1854 imposing said limit, were void, because their titles were in conflict with said section 6 of said organic act.

8. The decree is erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction in equity where the requisite diversity of citizenship existed and the

amount involved was sufficient, to entertain a suit to construe the alleged will and determine that real estate did not pass under it.

9. The decree was erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction in equity to enjoin the defendant administrator from distributing and his insolvent co-defendant from receiving, under an alleged nuncupative will, probated without jurisdiction, the entire estate of the deceased claimed by complainants as heirs at law and next of kin of the deceased, which distribution, if made, would create a cloud upon the title of complainants and deprive them of their property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States.

1480 10. The decree was erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction of a suit in equity to annul a pretended will and its fraudulent probate in a case where the requisite diversity of citizenship existed and the amount involved was sufficient for jurisdictional purposes, although by the law obtaining in the State of Washington, customary and statutory, an equitable proceeding *inter partes* might be maintained for the same purpose in the courts of the State exercising general jurisdiction.

11. The decree is erroneous in adjudging that it was within the power of the State of Washington to create an equitable right, enforceable by an equitable remedy *inter partes* in the courts of the State exercising general jurisdiction, but which could only be enforced in the courts of the State, although the requisite diversity of citizenship and the amount involved were sufficient to give the circuit court of the United States for the district of Washington jurisdiction.

12. The decree is erroneous in adjudging that the State of Washington has provided a right and remedy enforceable in the State courts only.

13. The decree is erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction of a suit by complainants, subjects of the King of Great Britain and Ireland, against citizens of the State of Washington, to enjoin the creation of a cloud upon the title of complainants' real estate and to prevent complainants' property from being disposed of to an

1481 insolvent under an alleged nuncupative will probated by a decree founded upon false testimony and fraudulent evidence by a court which never acquired jurisdiction.

14. The decree is erroneous in adjudging that the circuit court of the United States for the district of Washington had no jurisdiction of a suit in equity to prevent complainants being deprived of their property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States, by defendants, under a false and fraudulent nuncupative will, probated by a decree rendered *ex parte*, procured by fraud, based solely on false

evidence and without jurisdiction in the court rendering such decree, but which decree showed jurisdiction upon its face.

15. The decree is erroneous in reversing the decree of the circuit court of the United States for the district of Washington, and directing said court to dismiss the bill for want of jurisdiction, it being alleged in said bill, that the alleged nuncupative will had been probated without jurisdiction; that the court entering the decree of probate had not acquired jurisdiction to hear any evidence or take any steps for the probate of a nuncupative will wherein the estate bequeathed exceeded the value of two hundred dollars ($200.00); that no legal citation had been issued out of the court; that the court had acquired no jurisdiction to hear any proof; that under the laws of the State of Washington a nuncupative will is invalid where the estate bequeathed exceeds the value of two hundred dollars ($200.00); that the court probating said will had no jurisdiction over the real estate of the deceased claimed by complainants as his sole heirs at law; that the superior court, without having acquired jurisdiction, was about to order the administrator to surrender the estate to the defendant claiming under the alleged will, and that the ad-
1482 ministrator would obey said order, and the action of the administrator in obedience to said order would deprive complainants and each of them of their said property without due process of law, in violation of their rights under the fourteenth amendment to the Constitution of the United States; which allegations were denied in the answer of the defendant Marie Carrau; and the jurisdiction of the circuit court of the United States having been invoked on the ground that complainants were about to be deprived of their property without due process of law, in violation of their rights under the fourteenth amendment to the Constitution of the United States, the said United States circuit court of appeals had no jurisdiction of an appeal from the decree of said circuit court, and said United States circuit court of appeals should have dismissed said appeal for want of jurisdiction to hear the same.

Wherefore, appellants pray that said decree may be reversed, and that appellants may have an adjudication and decree in their favor as herein specified.

PILES, DONWORTH & HOWE,
C. H. FARRELL,
Solicitors and Counsel for Appellants.

Presented to me Dec. 14, 1903.

WM. B. GILBERT, *Judge.*

(Endorsed:) Assignment of errors. Filed Dec. 19, 1903. F. D. Monckton, clerk.

1483 In the United States Circuit Court of Appeals for the Ninth Circuit.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, Complainants, Appellants,
v.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellees.

No. 925. Order Fixing Amount of Supersedeas Bond.

On reading the petition of the above named appellants in the above entitled cause, for the allowance of an appeal to the Supreme Court of the United States from the judgment and decree of the United States circuit court of appeals for the ninth circuit, rendered therein; and said appellants having applied for a supersedeas so as to stay all proceedings on said judgment and decree,

It is ordered that a bond in the sum of five thousand dollars ($5000.00) be executed in behalf of the above named appellants, with good and sufficient surety, to be approved by the undersigned, and upon the execution of said bond the judgment and decree of said United States circuit court of appeals in this cause shall forthwith be superseded, and the mandate of this court and all proceedings thereon stayed until the final determination of the above entitled suit by the Supreme Court of the United States.

WM. B. GILBERT,
Circuit Judge of the United States for the Ninth Circuit and Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 14th day of December, 1903.

(Endorsed:) Order fixing amount of supersedeas bond. Filed Dec. 19, 1903, F. D. Monckton, clerk.

1484 In the United States Circuit Court of Appeals for the Ninth Circuit.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, Complainants, Appellants,
v.
TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellees.

No. 925. Bond.

Know all men by these presents that we, Hannah O'Callaghan, of Cork, Ireland, and Edward Corcoran, of Dublin, Ireland, as prin-

cipals, and Arthur Lewin and Charles A. McKenzie, both of Seattle, Washington, as sureties, are held and firmly bound unto Terence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, both of the city of Seattle, State of Washington, in the sum of five thousand dollars ($5000.00), to be paid to the said Terence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, and each of them, their successors, heirs, executors, administrators and assigns; for which payment well and truly to be made we do hereby bind ourselves, our and each of our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 20th day of November, A. D. 1903.

Whereas, the appellants in the above entitled suit, to-wit: said Hannah O'Callaghan and Edward Corcoran, have appealed to the Supreme Court of the United States to reverse the judgment and decree rendered and entered in said cause
1485 in the United States circuit court of appeals for the ninth circuit, on the 14th day of September, 1903, reversing the decree of the circuit court of the United States for the district of Washington in favor of said Hannah O'Callaghan and Edward Corcoran as complainants and against said Terence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, as defendants, and directing said circuit court to dismiss the bill of said complainants for want of jurisdiction, with costs, and said appeal has been allowed, and

Whereas, said appellants desire that pending said appeal the said judgment and decree of the said United States circuit court of appeals for the ninth circuit be superseded and the mandate of said court in said cause, and all proceedings thereon, be stayed until the final determination of said appeal, and

Whereas, the amount of said bond to operate as such supersedeas and stay has been fixed in the sum of five thousand dollars ($5000.00),

Now therefore, the condition of the above obligation is such that if the said appellants shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their said plea good, then this obligation shall be void, otherwise to remain in full force and effect.

HANNAH O'CALLAGHAN AND
EDWARD CORCORAN,

By their solicitor and counsel,

JAMES B. HOWE,
PILES, DONWORTH & HOWE, AND
CHARLES H. FARRELL.
ARTHUR LEWIN.
CHARLES A. McKENZIE.

1486 STATE OF WASHINGTON, } ss:
County of King, }

Arthur Lewin and Charles A. McKenzie, the sureties named in the foregoing bond, being first duly sworn, each for himself says, that he is a resident of the city of Seattle and State of Washington, and is worth the sum of five thousand dollars ($5,000.00) over and above all his just debts and liabilities, exclusive of property exempt from execution.

ARTHUR LEWIN.
CHARLES A. McKENZIE.

Subscribed and sworn to before me this 20th day of November, 1903.

[SEAL.] DALLAS V. HALVERSTADT,
Notary Public in and for the State of Washington, Residing at Seattle, in said State.

The foregoing bond is approved as an appeal and supersedeas bond this 14th day of December, 1903.

WM. B. GILBERT,
Judge of the Circuit Court of the United States for the Ninth Circuit and Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Bond. Filed Dec. 19, 1903, F. D. Monckton, clerk.

1487 United States Circuit Court of Appeals for the Ninth Circuit.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN ET AL., Appellees. } No. 925.

Order to Transmit Original Exhibits to Supreme Court U. S.

An appeal to the Supreme Court of the United States having been heretofore allowed in the above entitled cause,

It is ordered that the clerk of this court transmit to the clerk of the Supreme Court of the United States and as a part of the transcript of record upon appeal, the following enumerated original exhibits, viz: Complainants' Original Exhibits "Y 36," "Y 37," "Y 38," "Y 39," and "Y 50."

WM. W. MORROW,
Circuit Judge.

(Endorsed:) Order to transmit original exhibits to Supreme Court U. S. Filed Jan'y 5th, 1903. F. D. Monckton, clerk.

1488 In the United States Circuit Court of Appeals for the Ninth Circuit.

Citation.

UNITED STATES OF AMERICA, } *Ninth Circuit.* }

To Terence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington in the District of Columbia, within sixty (60) days after the date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein Hannah O'Callaghan and Edward Corcoran are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William B. Gilbert, circuit judge of the United States for the ninth circuit and presiding judge of the United States circuit court of appeals for the ninth circuit, this 14 day of December, 1903.

WM. B. GILBERT,
Circuit Judge of the United States for the Ninth Circuit and Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

1489 *Return on Service of Writ.*

UNITED STATES OF AMERICA, } *Northern District of Washington,* } ss:

I hereby certify and return that I served the annexed citation on the therein-named Terence O'Brien, as administrator of the estate of John Sullivan by handing to and leaving a true and correct copy thereof with Terence O'Brien personally at Seattle in said district on the 15th day of December, A. D. 1903

C. B. HOPKINS,
U. S. Marshal,
By FRED. M. LATHE, *Deputy.*

Marshal's Fees.

Service	2.00
Mileage	.06
	2.06

1490 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
Northern District of Washington, } ss:

I hereby certify and return that I served the annexed citation on the therein-named Marie Carrau by handing to and leaving a true and correct copy thereof with Mrs. Augustine Daussat, her sister, at the regular place of abode of Marie Carrau personally at Seattle in said district on the 15 day of December, A. D. 1903

C. B. HOPKINS,
U. S. Marshal,
By FRED. M. LATHE, *Deputy.*

Marshal's Fees.

Service	2.00
Mileage	.12
	$2 12

[Endorsed:] D. (Original) No. 925. In the United States circuit court of appeals for the ninth circuit. Hannah O'Callaghan and Edward Corcoran, complainants, appellants, *v.* Terence O'Brien as administrator of the estate of John Sullivan, deceased, and Marie Carrau, defendants, appellees. Citation on appeal to Supreme Court U. S. Filed Dec. 19 1903 F. D. Monckton, clerk. Piles, Donworth & Howe, and C. H. Farrell, solicitors and counsel for appellants, # 316 Burke building, Seattle, Washington.

1491 In the United States Circuit Court of Appeals for the Ninth Circuit.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, Complainants, Appellants, *v.* TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, Deceased, and Marie Carrau, Defendants, Appellees.	No. 925. Order Allowing Appeal.

The said complainants, appellants, Hannah O'Callaghan and Edward Corcoran, having heretofore filed in this court their petition for the allowance of an appeal in the above entitled case from this court to the Supreme Court of the United States, and having also heretofore filed in this court their assignments of error with said petition for the allowance of said appeal, and having prayed for the reversal of the decree appealed from,

It is by the court ordered that said appeal in the above entitled cause to the Supreme Court be and the same is hereby allowed as prayed.

It is further ordered that the appeal and supersedeas bond of said complainants in the sum of five thousand dollars ($5000.00), with Arthur Lewin and Charles A. McKenzie as sureties now on file in this court, be and the same is hereby accepted and approved as an appeal and supersedeas bond on the said appeal.

Dated, January 25, 1904.

WM. B. GILBERT,
Judge of the Circuit Court of the United States for the Ninth Circuit and Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Order allowing appeal to Supreme Court U. S. and approving bond on appeal. Filed Jan. 25, 1904, F. D. Monckton, clerk.

1492 United States Circuit Court of Appeals for the Ninth Circuit.

MARIE CARRAU, Appellant,
vs.
HANNAH O'CALLAGHAN, Otherwise Known as JOHANNA CALLAGHAN, and Edward Corcoran, Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript on Appeal.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing fourteen hundred and ninety-one (1491) pages, numbered from one (1) to fourteen hundred and ninety-one (1491), inclusive, and contained in the preceding four (4) volumes, marked respectively, volumes I, II, III, and IV, to be a true copy of the record and of the assignment of errors and of all proceedings had in the said case in the United States circuit court of appeals for the ninth circuit, including the opinion filed, as the same remain of record in my office, and that the same, together with Complainants' Original Exhibits "Y 36," "Y 37," "Y 38," "Y 39," and "Y 50," heretofore placed in my custody and transmitted to the clerk of the Supreme Court of the United States, constitute the transcript of record herein upon appeal to the Supreme Court of the United States.

Attest my hand and the seal of the said United States circuit court of appeals for the ninth circuit at San Francisco, California this 6th day of February, A. D., 1904.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

1493 In the United States Circuit Court of Appeals for the Ninth Circuit.

Citation.

UNITED STATES OF AMERICA, } *Ninth Circuit.* }

To Terence O'Brien, as administrator of the estate of John Sullivan, deceased; Marie Carrau, W. M. Russell, and S. F. Coombs:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington in the District of Columbia, within sixty (60) days after the date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein Hannah O'Callaghan and Edward Corcoran are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William B. Gilbert, circuit judge of the United States for the ninth circuit and presiding judge of the United States circuit court of appeals for the ninth circuit, this 25th day of January, 1904.

WM. B. GILBERT,
Circuit Judge of the United States for the Ninth Circuit and Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

1494 Form No. 282.

UNITED STATES OF AMERICA, } *District of Oregon,* } *ss.*:

I hereby certify and return that I served the annexed citation on the therein-named W. M. Russell, by handing to and leaving a true and correct copy thereof with said W. M. Russell personally at Portland, Oregon in said district on the 30th day of January, A. D. 1904.

W. F. MATTHEWS,
U. S. Marshal,
By J. A. WILSON, *Deputy.*

Marshal's fee $4.12.

1495

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I hereby certify and return that I served the annexed citation on the therein-named Terence O'Brien, as administrator of the estate of John Sullivan deceased, and S. F. Coombs by handing to and leaving a true and correct copy thereof with each of them personally at Seattle in said district on the 28th day of Jan'y, A. D. 1904.

C. B. HOPKINS,
U. S. Marshal,
By H. W. TYLER, *Deputy.*

Marshal's fee $4.12.

1496

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA, }
District of Washington, } ss:

I hereby certify and return that I served the annexed citation on the therein-named Marie Carrau at her usual place of abode at No. 1417—Seventh Ave.—in the city of Seattle by handing to and leaving a true and correct copy thereof with Hermance Carrau, a person of suitable age & discretion then resident therein, personally at Seattle in said district on the 28th day of Jan'y, A. D. 1904.

C. B. HOPKINS,
U. S. Marshal,
By H. W. TYLER, *Deputy.*

Marshal's fee $2.12.

[Endorsed:] I. (Original) No. 925 Citation. Hannah O'Callaghan *et al.*, complainants, appellants, *v.* Terence O'Brien as administrator, *et al.*, defendants, appellees. Citation on appeal to Supreme Court U. S. Filed Feb. 5 1904 F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit. Piles, Donworth & Howe and C. H. Farrell, attorneys for complainants, appellants. Post-office address #316 Burke building, Seattle, King county, Washington.

Endorsed on cover: File No. 19,244. U. S. C. C. of appeals, 9th circuit. Term No. 193. Hannah O'Callaghan & Edward Corcoran, appellants, *vs.* Terence O'Brien, as administrator of the estate of John Sullivan, deceased; Marie Carrau, W. M. Russell, & S. F. Coombs. Filed February 23, 1904. File No. 19,244.

FILE COPY.

Office Supreme Court U. S.
FILED
APR 12 1904
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Petitioners,*

v.

TERENCE O'BRIEN as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*

No. 893. 1903.

PETITION FOR WRIT OF CERTIORARI

JAMES B. HOWE,
Counsel for Petitioners,
Seattle, Washington.

SAMUEL H. PILES,
GEORGE DONWORTH,
CHARLES H. FARRELL,
Of Counsel.

IN THE

Supreme Court of the United States

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Petitioners,* v. TERENCE O'BRIEN as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*	No. 593. October Term, 1903.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Supreme Court of the United States:

The petition of Hannah O'Callaghan and Edward Corcoran respectfully shows:

In this suit the Circuit Court of the United States for the District of Washington entered a decree which adjudged complainants, these petitioners, to be heirs at law and next of kin of one John Sullivan, deceased, who died intestate in King County, in the State of Washington, leaving there an estate of real and personal property exceeding in value three hundred thousand dollars; directed the respondent Terence O'Brien as Administrator of such estate to recognize the petitioners as such heirs and next of kin; adjudged that an alleged *nuncupative will,*

under which the respondent Marie Carrau claimed the entire estate, had never been made; that its probate was a nullity, and enjoined Marie Carrau from making any claim to the estate under either the alleged will or its probate. (R. p. 245.)

The United States Circuit Court of Appeals for the Ninth Circuit erred in reversing the decree of the Circuit Court for want of jurisdiction of the subject matter of the suit, and directing that the bill be dismissed. (R. pp. 1433, 1452.)

The Circuit Court of Appeals erred in holding (R. pp. 1433-1452):

1st. That two British subjects, heirs at law and next of kin of a decedent who died in King County, Washington, leaving real and personal property there, worth upwards of three hundred thousand dollars, could not maintain a suit in the Circuit Court of the United States for the District of Washington against the administrator of the estate of the deceased, and one claiming the entire estate under an alleged nuncupative will of the deceased, probated by a decree of a court of general jurisdiction, regular upon its face, void in fact, and obtained by fraud, to annul such alleged will and its fraudulent probate, although for jurisdictional purposes the amount involved was sufficient and the requisite diversity of citizenship existed, and by the law of the State of Washington, customary and statutory, an equitable proceeding could be maintained between the same parties for the same relief in a court of the state exercising general jurisdiction.

2nd. That the Circuit Court of the United States for the District of Washington had no jurisdiction of the subject matter of a suit by such heirs against such administrator and such claimant, to construe the alleged nuncupative will and determine it invalid on its face.

3rd. That the Circuit Court of the United States for the District of Washington had no jurisdiction of a suit between such parties to construe the alleged nuncupative will and determine that real estate was not conveyed by it.

4th. That if the Circuit Court of the United States for the District of Washington otherwise had jurisdiction of any one of the foregoing controversies, the fact that the claimant under the alleged nuncupative will pleaded that persons other than the petitioners in this suit also claimed to be the only heirs of the deceased, who could not be made parties because of their

citizenship, deprived the Circuit Court of the United States of jurisdiction to determine the controversies between the parties before the court, although no decree could be entered affecting in any manner the rights of such absent claimants, and though the parties before the court all contended that the claims of such absent persons were without foundation in fact.

The history of the suit, as shown by the record, is as follows:

John Sullivan, a bachelor, sixty years of age, a resident of Seattle, King County, Washington, died there on the 26th day of September, 1900, intestate. He left surviving him as heirs at law and next of kin his first cousins, the petitioners, residents of Ireland, and subjects of the King of Great Britain and Ireland. He left an estate in King County, Washington, consisting of realty worth upwards of three hundred thousand dollars, and personalty of the value of about fifteen thousand dollars. Immediately upon his death, a special administrator of his estate was appointed who took charge of his estate (R. pp. 6, 64). A number of persons filed petitions in the Superior Court of the State of Washington for King County, in which they alleged that they were creditors of Sullivan, and prayed that letters of administration upon his estate should issue. Each petitioner for letters of administration named a different nominee for the office of general administrator of the estate (R. p. 991).

Some months prior to his death, Sullivan visited the Paris Exposition. He returned to Seattle, intending at an early date to again visit France (R. pp. 6, 64). On his visit to France he had been embarrassed by his ignorance of French (R. p. 768). When he returned to Seattle, he boarded and lodged at the house of one Louis Daussat, and took lessons in French from the respondent Marie Carrau, a sister-in-law of Daussat residing in the same house (R. pp. 479, 523). For his board, lodging and tuition Sullivan paid thirty-five dollars per week (Ex. Y 18, R. p. 923). He had never seen Marie Carrau prior to the 31st day of July, 1900 (R. pp. 478, 505). She claims that on September 1st, 1900, Sullivan asked her to marry him (R. p. 519). On that day he paid his bill for his week's board, lodging and tuition, and received a receipt therefor (Ex. Y 18, R. p. 523). She claims that on September 8, 1900, he again asked her to marry him, promised her all of his property, and that she consented to marry him. On that day he again paid his bill for board, lodging and tuition (R. p. 485; Ex. Y 18, R. p. 523). He continued to make his weekly payments for board,

lodging and tuition after his illness and until a few days before his death (Ex. Y 18, R. pp. 523, 506). Marie Carrau claims that on September 25, 1900, the night before he died, Sullivan, *by an oral will*, devised and bequeathed to her his entire estate; that the will was made in the presence of her brother-in-law, her sisters, herself, and no one else, and that Sullivan died the next morning.

Sullivan was a Roman Catholic. No priest was called to minister to him, although a telephone was in the house. A physician lived next door, but his assistance was not sought (R. pp. 435, 461, 534).

Sullivan died on September 26, 1900. On October 5th, 1900, Louis Daussat, the brother-in-law of Marie Carrau, and Marie Carrau, signed and, on October 8th, 1900, filed their petition in the Superior Court of the State of Washington for King County, wherein they alleged that Sullivan had died *intestate;* that at the time of his death he was *indebted to them;* and they prayed that I. D. McCutcheon, Esq., should be appointed administrator of the estate (Ex. Y 25, R. p. 928).

The various petitions for general letters of administration and for the appointment of a general administrator were duly brought on for hearing November 18th, 1900. On the 19th day of November, 1900, the Superior Court in the proceeding in which Marie Carrau and Louis Daussat petitioned as creditors for the appointment of a general administrator on the ground that Sullivan had died intestate, found by its decree appointing a general administrator that Sullivan had died intestate and indebted to them in a small sum. The respondent Terence O'Brien was appointed general administrator of the estate (Ex. Y 46, R. p. 991). He duly qualified as such, and entered upon the discharge of his duties. *On the 8th day of March*, 1901, the respondent Marie Carrau filed in the Superior Court of the State of Washington for King County her petition, in which she alleged that at about the hour of 11 o'clock P. M. on the 25th day of September, 1900, Sullivan, while in the actual contemplation, expectation and fear of death, and in the presence of herself, Louis Daussat, Augustine Daussat and Hermance Carrau, made *a nuncupative will* in the following words:

"I want you to remember *and witness* that I *will all my property* and personal effects, *worth many thousands of dollars*, to be the money and property of *your sister, Marie Carrau. I am sick, and we know not what might happen.*"

In her petition she also alleged that the will was made at the house wherein Sullivan had resided for more than ten days immediately preceding his death; that Sullivan requested the persons named to bear witness to his will; that the words constituting the will had been reduced to writing, and that the writing accompanied her petition; that the time of his death Sullivan was a bachelor; that he left personal property of the value of fifty thousand dollars and real estate of the probable value of four hundred and fifty thousand dollars (Ex. Y 28, R. p. 936). This petition was presented to the Judge of the Superior Court of the State of Washington for King County at *about half past eleven o'clock a. m., March the 8th*, 1901. (Ex. Y 29, R. p. 941).

A nuncupative will, under the laws of Washington, is invalid where the estate bequeathed exceeds two hundred dollars.

Section 6 of the Organic Act of the Territory of Washington, approved March 2nd, 1853 (U. S. Stats. at Large, Vol. 10, pp. 172, 175), is as follows:

"Sec. 6. * * To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, *every law shall embrace but one object, and that shall be expressed in the title.*"

The Territorial Legislature, at its first session, in 1854, enacted a statute entitled:

"An Act establishing probate courts for the Territory of Washington."

Laws of 1854, Territory of Washington, p. 309.

At the same session the legislature enacted a statute entitled:

"An Act relating to Wills."

Laws of 1854, Territory of Washington, p. 312.

Sec. 23 of this act provides:

"*No nuncupative will* shall be good when the estate bequeathed *exceeds the value of two hundred dollars, nor* unless the same be proven by two witnesses who were present at the making thereof, nor unless it be proven that the testator at the

time of pronouncing the same did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return."

No change was attempted to be made in the amount of an estate which could be bequeathed by nuncupative will, until November 11, 1873, when the Legislature of the Territory, by an act approved on that date, entitled:

"An Act *defining* the *jurisdiction* and *practice* in the probate courts of Washington Territory,"

omitted the word "nor" after the words "two hundred dollars" and before the word "unless," and thereby, if the repeal was valid, removed the limitation on the amount of an estate which might be bequeathed by nuncupative will (Laws of 1873, pp. 252, 259), making the section read as follows:

"Sec. 33. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars (—) unless the same be proved by two witnesses. * * *"

Section 33 of the Act of November 11, 1873, was re-enacted by the Territorial Legislature by an act approved December 1, 1881, entitled:

"An Act *defining* the *jurisdiction* and *practice* in the probate courts of Washington Territory."

Pierce's Code of Washington, p. 355.

There is nothing in the title of the act of November 11, 1873, nor in the title of the act of December 1, 1881, in any manner relating to the subject of wills. The subject of wills is not mentioned in the title of either of those acts. The section in the body of each of those acts, re-enacting Section 23 of the Act of 1854, but omitting the word "nor" and by such omission repealing the limitation imposed by section 23 of the Act of 1854 upon the amount of an estate which might be bequeathed by nuncupative will, is in conflict with the provision of Section 6 of the Organic Act of the Territory, which requires that every law of the Territory—

"—shall embrace but one object, and that shall be expressed in the title."

There has been no legislation relating to nuncupative wills since the Territory of Washington became a State.

A nuncupative will cannot, under the law of Washington, be probated ex parte.

"No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing *and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper.*"

Pierce's Washington Code, Sec. 2352. Ballinger's Code, Sec. 4606 (Laws of 1854, Section 25.)

"In all cases in which citations are issued from the Superior Court in probate proceedings, *they shall be served at least ten days before the term at which they are made returnable*, except when issued from the court in cases where the law requires the judge to issue them upon his own motion and he does so issue them, *and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court.*"

Pierce's Code of Washington, Sec. 2331. Ballinger's Code, Sec. 6083.

A written will is probated in Washington *ex parte*. Laws 1854, Section 17.

Pierce's Code of Washington, 2385. Ballinger's Code, 6100.

The law of the State of Washington with reference to the contest of a will admitted to probate is as follows:

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issues shall be made up, tried and determined in said court respecting the

competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will."

Pierce's Code of Washington, Sec. 2395. Ballinger's Code, 6110.

"Upon the filing of the petition referred to in the next preceding section a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the territory (state), or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted."

Pierce's Code, Sec. 2396. Ballinger's Code, 6111.

"If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed."

Pierce's Code, Sec. 2397. Ballinger's Code, 6112.

At half past eleven o'clock a. m., March the 8th, 1901, upon the presentation to the judge of the petition for the probate of the alleged nuncupative will, he made an order that a citation issue directed to the widow or next of kin of the deceased, requiring them to appear before the court *at a time then already past*, namely, ten o'clock a. m. of the same day, to show cause why the nuncupative will should not be admitted to probate. (Ex. Y 29, R. pp. 941, 324-326.) The citation immediately issued, directed to the widow and next of kin, requiring them to appear at ten o'clock a. m., March the 8th, 1901, *a time then already past*, and show cause why the will should not be admitted to probate. The citation was immediately placed in the hands of the sheriff for service, and without leaving his office he returned that he could not find any widow or next of kin of the deceased in King County. The return was immediately presented to the judge (R. pp. 325-328).

The testimony of the witnesses to the alleged will was immediately received by the court. These witnesses were Louis Daussat, a brother-in-law of the claimant under the nuncupative will, and her sisters, Augustine Daussat and Hermance Carrau. Immediately upon giving their testimony, these witnesses signed previously prepared typewritten affidavits in support of the will (R. pp. 324-326).

At this time the general administrator of the estate was in the City of Seattle, King County, in the discharge of the duties of his office. He had no knowledge of the proceeding to probate the will, nor was notice given to him or anyone else of the proceeding (R. pp. 327, 328). At this time there were on file in the office of the Clerk of the Court in the proceedings in the administration of the estate, two notices signed by counsel, resident in Seattle, representing certain persons (other than these petitioners), claiming to be heirs of the deceased. No notice of the proceeding to probate the will was given to counsel representing those parties. The existence of those claims was not disclosed to the court (R. pp. 931, 934, 325-328).

The court immediately upon hearing the testimony, made a certificate of the probate of the will, and immediately entered a decree thereon adjudging that the court had acquired jurisdiction, that the will was entitled to probate, and admitting it to probate (R. pp. 324-326; Ex. Y 31, p. 945; Y 32, p. 949). The certificate of probate and the decree of probate were typewritten documents which had been prepared in advance of the probate proceedings (R. p. 325).

On March 26th, 1901, Marie Carrau, by her attorneys, filed her petition for the revocation of O'Brien's letters of administration (Ex. Y 41, R. pp. 974-976).

After March 26, 1901, and *prior to March* 30, 1901, one of Marie Carrau's attorneys, who had assisted in the probate of the alleged will, became the attorney for the administrator (R. pp. 338, 339).

On March 30, 1901, the petition for the revocation of O'Brien's letters of administration was withdrawn without prejudice (Ex. Y 41, R. pp. 977, 978). On May 21, 1901, Marie Carrau filed her petition in the Superior Court for King County, and prayed for the distribution of the entire estate to her as the owner thereof under the nuncupative will, one of her attor-

neys being also attorney for the administrator (Ex. Y 40, R. p. 971).

The hearing of her petition was fixed by the court for the 21st day of June, 1901 (Ex. Y 40, p. 971, 15). On the 20th of June, 1901, these petitioners filed their bill in equity in the Circuit Court of the United States for the District of Washington (R. pp. 6-15), wherein they alleged substantially the foregoing facts, the requisite diversity of citizenship, the amount involved in the controversy, that the alleged nuncupative will had been manufactured by the respondent Marie Carrau and her sisters and brother-in-law, and that they had conspired together to obtain for themselves all the property of John Sullivan, deceased, by means of false testimony and by the manufacture of evidence to support the pretended nuncupative will.

In their bill these petitioners further alleged that the Superior Court of the State of Washington for King County acted wholly without jurisdiction in the matter of the probate of the alleged will; that the court never acquired jurisdiction to hear any evidence or take any step for the probate of the will; that no legal citation had been issued out of said court; that ten days had not elapsed between the filing of the pretended will and the hearing of the pretended proof in support of it; that under the law of the State of Washington a nuncupative will was invalid where the estate bequeathed exceeded the value of two hundred dollars, and that a nuncupative will, even if valid, could not dispose of real estate.

The bill further alleged that the estate was very little in debt; that the complainants were, even if the alleged will should be held valid, entitled to all of the real estate and the rents, issues and profits thereof since the death of Sullivan; that they were informed that the Superior Court would order the administrator to deliver the entire estate to Marie Carrau under the alleged will; that the administrator would obey the order, and that the action of the court and of the administrator would deprive the complainants of their property without due process of law, in violation of their rights under the Fourteenth Amendment to the Constitution of the United States; that the respondent Marie Carrau was insolvent; that if possession of the estate was delivered to her, she would transfer it to various persons and render it necessary for the complainants to institute a multiplicity of suits to protect their rights in the property, and that they had no adequate remedy at law.

They prayed as follows:

That the pretended nuncupative will should be adjudged null and void and of no force and effect whatever; that in the event that the will should not be adjudged null and void, the same should be adjudged not to pass any title to the real estate of the deceased, nor to any of the rents, issues and profits issuing out of said real estate since the death of the deceased; that the respondent Marie Carrau be perpetually restrained and enjoined from setting up any title or claim under the pretended will; that the administrator should be restrained from turning over any of the property to her, and that she should be enjoined from receiving possession of any of the property, and from in any manner interfering with it; that upon the final hearing and determination of the suit, complainants should be adjudged to be the only heirs at law of the deceased and entitled to his whole estate, and that the administrator should surrender the same and account therefor to them (R. pp. 6-15).

Upon the filing of the bill, process was immediately issued and served upon each of the respondents. On the same day, but later in the day, the petitioners filed a petition in the Superior Court of the State, alleging that Sullivan had died intestate, and setting forth substantially the same facts alleged in their bill in the Circuit Court of the United States, and in said petition stated that the filing of the petition was without prejudice to their right to carry on the suit instituted by them in the Circuit Court of the United States (Ex. Y 33, R. p. 954). In the Circuit Court the administrator filed a disclaimer of any interest in the controversy between the petitioners and the respondent Marie Carrau (R. p. 33).

The respondent Marie Carrau filed various papers in the Circuit Court of the United States for the District of Washington, wherein she claimed that the Superior Court of the State of Washington for King County was the only court having jurisdiction of the controversy between the petitioners and herself. Upon her objection to the jurisdiction of the Circuit Court being overruled, and after the Circuit Court had set aside an order of default which had been entered against her, she filed her answer, in which she alleged that the petitioners were not related to the deceased; admitted that the deceased left no relation nearer than first cousin; alleged the making of the nuncupative will; that it was valid; that it conveyed the entire estate to her; that the Superior Court duly probated the will; that the court acquired jurisdiction; that the citation was regularly issued; that the decree of probate entered on the 8th day of March, 1901, was in full force and effect; that the Su-

perior Court for King County had entire jurisdiction of the matter; denied that the distribution of the estate to her by the Superior Court of King County under the nuncupative will, and the decree probating the same, would be in violation of the rights of complainants under the Fourteenth Amendment to the Constitution of the United States; and denied that they would be deprived of any property without due process of law by a decree of distribution to her; that persons other than complainants had filed claims in the Superior Court claiming to be the sole heirs of the deceased, and that those claims were pending in the Superior Court (R. pp. 35, 64, 79).

A general replication to this answer was filed (R. p. 84). Evidence was duly taken in the suit. A large number of witnesses were examined in Ireland. The Circuit Court of the United States for the District of Washington rendered the decree before referred to in favor of these petitioners; adjudged that the Superior Court of the State of Washington had never acquired any jurisdiction to probate the alleged will; that the alleged will had never been made, nor had Sullivan ever spoken the words alleged to constitute his will, or any words of similar import; directed the administrator to recognize these petitioners as the heirs at law and next of kin of the deceased, and as such entitled to share in his estate, and enjoined Marie Carrau from making any claim to the estate or any part thereof under the alleged will and its alleged probate, or either, except in a court having appellate jurisdiction to review the decree (R. p. 243). Respondent Marie Carrau appealed from the decree of the Circuit Court to the United States Circuit Court of Appeals for the Ninth Circuit (R. pp. 253-258). The Circuit Court of Appeals declined to consider the merits of the case, and entered a decree reversing the decree of the Circuit Court, with directions to dismiss the bill (R. p. 1452). These petitioners filed a petition for a rehearing in the Circuit Court of Appeals, and prayed that court to set aside its decree of reversal, and to certify to this court for determination the question whether the Circuit Court of the United States for the District of Washington had jurisdiction of the suit. On the 9th day of November, 1903, the petition for rehearing was denied (R. p. 1453). Thereafter these petitioners filed their petition, praying the allowance of an appeal from the decree of the Circuit Court of Appeals to this court, on the ground that the jurisdiction of the Circuit Court of the United States for the District of Washington was not dependent upon diversity of citizenship only, because complainants had alleged facts showing that the state court had entered a decree affecting the property of

these petitioners, without having acquired any jurisdiction of the proceeding in which such decree was entered, and that the distribution of the estate to the respondent Carrau under the alleged will and the decree probating the same, entered without jurisdiction, would deprive these petitioners of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States. With the petition for the allowance of their appeal, the petitioners filed their assignments of error, in which they alleged, among other things, that the jurisdiction of the Circuit Court of the United States for the District of Washington being invoked on the ground that the suit involved the construction and application of the Constitution of the United States, the Circuit Court of Appeals was without jurisdiction of an appeal from the decree of the Circuit Court, because the Supreme Court had exclusive jurisdiction of an appeal from a decree of the Circuit Court in such case (R. p. 1455).

The appeal prayed for by the petitioners was duly allowed, and has been perfected, and the cause has been docketed in this court as No. 593 of the October Term, 1903.

Your petitioners respectfully show to the court that if the allegations of the bill did not set forth facts showing a real and substantial controversy, depending on the construction or application of the Constitution of the United States, then it may be that the decision of the United States Circuit Court of Appeals was final, and the only means by which said decree can be reviewed is by the issuance out of this court of a writ of certiorari. In the ordinary course of the business of this court, if jurisdiction of the appeal should be denied, it will be too late for this court to then acquire jurisdiction of this suit by a writ of certiorari.

The decision of the United States Circuit Court of Appeals in this suit is in conflict with the decision of the same court when presided over by Mr. Justice McKenna, then Circuit Judge, in

Richardson v. Green, 61 Fed., p. 423.

In that case the court said:

"If a suit is essentially a suit of a civil nature, for equitable relief, and it is customary to prosecute the same *in any state court* where the action arose, whether the same is *a county court*

or *a probate court* or *a District or Circuit Court*, the proper Federal Court will have *concurrent jurisdiction* of the same with such state courts, where the amount is sufficient and the parties are citizens of different states, as prescribed by the United States statutes."

The jurisdiction of the Circuit Court of the United States for the District of Oregon to entertain a suit to set aside a will as a forged instrument, and a decree probating the same on the ground that it was obtained by fraud, was sustained.

The defendants in that case applied to this court for a writ of certiorari, wherein they alleged that the Circuit Court of the United States for the District of Oregon had no jurisdiction to entertain such a suit, because none of the courts of the State of Oregon had jurisdiction to entertain a suit between parties for such relief.

The first paragraph of the brief of counsel in that case on their application for the writ of certiorari, is as follows:

"The Circuit Court of the United States for the District of Oregon is without jurisdiction to decree a will invalid and cancel the same, none of the courts of the State of Oregon having jurisdiction to entertain a suit between parties for such relief." (Page 1 of petitioners' brief.)

The application for the writ was denied by this court.

Richardson v. Green, 159 U. S., 264.

Your petitioners also respectfully show to the court that the decision of the Circuit Court of Appeals in this suit is in conflict with the following decisions:

Decisions of This Court.

Byers v. McAuley, 149 U. S. 608.
Richardson v. Green, 159 U. S. 264.
Ellis v. Davis, 109 U. S. 485.
Gaines v. Fuentes, 92 U. S. 21.
Broderick's Will, 21 Wall. 503.
Payne v. Hook, 7 Wall. 425.

Decisions of the United States Circuit Court of Appeals.

Richardson v. Green, 61 Fed. 423 (Ninth Circuit).
Sawyer v. White, 122 Fed. 223 (Eighth Circuit).
Williams v. Crabbe, 117 Fed. 193 (Seventh Circuit).

Decisions of Circuit Courts.

Wart v. Wart, 117 Fed. 766.
Broadhead v. Shoemaker, 44 Fed. 518.
Everhart v. Everhart, 34 Fed. 82.

Decisions of the Supreme Court of the State of Washington.

Clayson v. Clayson, 26 Wash. 253.
Filley v. Murphy, 30 Wash. 1.
Browder v. Phinney, 30 Wash. 74.
Higgins v. Nethery, 30 Wash. 239.
State ex rel. Stratton v. Tallman, 25 Wash. 295.
State ex rel. Stratton v. Tallman, 29 Wash. 317.
Reformed Presbyterian Church v. McMillan, 31 Wash. 643.
Bower v. Bower, 5 Wash. 225.
Mason v. McLean, 6 Wash. 31.
Hill v. Hill, 7 Wash. 408.
Purdy v. Davis, 13 Wash. 164.

Your petitioners submit that it is of the utmost importance that the rule should be uniform throughout the Circuits of the United States that whenever by the law of a state, customary or statutory, a proceeding *inter partes* can be maintained in a state court of general jurisdiction for the annulment of a will and its probate, a suit can be maintained in the Circuit Court of the United States sitting in the same state, when the amount involved is sufficient and the requisite diversity of citizenship exists for the purposes of jurisdiction.

Jurisdiction denied because of non-joinder of parties whose joinder would oust the court of jurisdiction.

The petitioners are aliens. Respondents are citizens of the United States. Diversity of citizenship existed. The respond-

ent Marie Carrau pleaded that petitioners were not related to the deceased (R. p. 65). She claimed that the deceased left no relatives (R. pp. 439, 483). She did not plead that the deceased left heirs who should be made parties. She pleaded that certain persons claimed to be the only heirs of the deceased. She claimed that the alleged will gave her the entire estate, whether the deceased left heirs or not. She admitted that there were no persons nearer of kin than first cousins (R. p. 65). If Marie Carrau had shown that the petitioners were not related to the deceased, she would have defeated them; if she had shown that there was any person of nearer kin to the deceased than the petitioners, she would also have defeated them; if she had shown that the alleged will was valid, legally probated, and that it conveyed real estate, she would have defeated them.

Under the statute of Washington *any person interested* in any will may contest it.

Sec. 2395, Pierce's Code, *supra.*

The persons to be made defendants in the contest are the executors or administrator and the legatees, named in the will, residing in the state.

Sec. 2396, Pierce's Code, *supra.*

All persons required by the statute were before the court in the case at bar. The Circuit Court of Appeals held that the non-joinder as defendants of persons whose joinder would oust the court of jurisdiction, and which persons both the petitioners and respondent claimed were not related to the deceased and had no interest in his estate, deprived the court of jurisdiction to determine the controversy between the parties, actually before the court, between whom the requisite diversity of citizenship did exist. The decisions of the courts of the United States are directly to the contrary.

Byers v. McAuley, 149 U. S. 608.
Williams v. U. S., 138 U. S. 514.
Kerr v. Watts, 6 Wheat. 160.
Ellendorff v. Taylor, 10 Wheat. 360.
Williams v. Crabb, 117 Fed. 193.
Vattier v. Hinde, 7 Peters 252, 263.
Storey v. Livingston, 13 Peters, 359, 375.
Fisher v. Shropeshire, 147 U. S. 133.
Railway Co. v. Stewart, 95 U. S. 284.

Dick v. Balch, 8 Peters 36.
Osborne v. U. S. Bank, 9 Wheat. 738, 857.
U. S. v. Hendy, 54 Fed. 447.
Billings v. Aspen Mining Co., 51 Fed. 338.
Smith v. Lee, 77 Fed. 779.
Hamilton v. Savannah R. R., 49 Fed. 412.

Your petitioners present herewith, as a part of this petition, a brief presenting more fully the questions involved and showing the importance of those questions.

Inasmuch as there is doubt whether the right of appeal exists in this case, your petitioners have applied promptly to this court for a writ of certiorari to review the decree of the Circuit Court of Appeals. The Circuit Court of Appeals has superseded its decree and stayed its mandate until the final determination of this suit by this court, and the record in the suit is now on file in this court.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Court of Appeals in this case, which was entitled in that court,

"MARIE CARRAU, *Appellant,*

v

HANNAH O'CALLAGHAN, otherwise known as JOHANNA CALLAGHAN, and EDWARD CORCORAN, *Appellees,*"

to the end that said cause may be reviewed and determined by this court as provided by law; that the record now on file be deemed and taken as the return to said writ, and that your petitioners may have such other and further relief or remedy in the premises as to this court may seem appropriate; and that the said decree of the said Circuit Court of Appeals may be reversed by this Honorable Court.

HANNAH O'CALLAGHAN and
EDWARD CORCORAN.

By JAMES B. HOWE, Their Counsel.

SAMUEL H. PILES,
GEORGE DONWORTH,
C. H. FARREL, of Counsel.

State of Washington, }
County of King. } ss.

James B. Howe being first duly sworn, on oath deposes and says: I have read the foregoing petition and know the contents thereof and believe the same to be true. I make this affidavit for and on behalf of the above named petitioners, for the reason that one of said petitioners is a resident of Cork, Ireland, and the other of Dublin, Ireland, and neither of them is now within the United States. I am and have been one of the solicitors and counsel for the petitioners in the suit mentioned in the foregoing petition, and in all proceedings connected therewith.

JAMES B. HOWE.

Sworn to and subscribed before me
this 21st day of March, 1904.

[Official Seal.]

GEORGE F. VANDERVEER.
Notary Public in and for the State of
Washington, residing at Seattle.

I hereby certify that I am counsel for the petitioners named in the foregoing petition for writ of *certiorari*. I have read the foregoing petition, know the contents thereof, believe the same to be true, and my opinion is that the foregoing petition is well founded in law.

JAMES B. HOWE,

Counsel for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Petitioners,*

vs.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*

No. 593

Notice of Application to Supreme Court for Writ of Certiorari.

To Terence O'Brien, as Administrator of the Estate of John Sullivan, deceased, and Marie Carrau: You, and each of you, are hereby notified that the above named petitioners will, on Monday, the 25th day of April, 1904, at twelve o'clock M., upon the coming in of the Supreme Court of the United States, upon their verified petition and copy of the entire record in this case, submit to the Supreme Court of the United States, in its court room at the capitol in the City of Washington, District of Columbia, their motion and petition for an order granting a writ of certiorari in the above entitled case, directed to the United States Circuit Court of Appeals for the Ninth Circuit, requiring said court to certify to said Supreme Court of the United States the entire record in cause numbered 925, lately pending in the said Circuit Court of Appeals, wherein these petitioners are appellees and Marie Carrau is appellant, a copy of which motion and of the petition for the writ of certiorari and of the brief in support thereof are herewith delivered to you.

March 25th, 1904.

JAMES B. HOWE.
Counsel for Petitioners.

SAMUEL H. PILES,
GEORGE DONWORTH,
CHARLES H. FARRELL.
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Petitioners,* vs. TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*	No. 593

Motion for Writ of Certiorari.

Now come Hannah O'Callaghan and Edward Corcoran, by the undersigned, their counsel, and move this honorable court that it shall, by a writ of certiorari directed to the honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit, require said Judges of said court to cause to be certified to this court, for its review and determination, a certain cause, in said Court of Appeals lately pending, wherein the said Hannah O'Callaghan and Edward Corcoran were appellees and Marie Carrau was appellant, numbered in said court 925, and to that end they now tender herewith their petition and brief, with a certified copy of the entire record in said cause in said Circuit Court of Appeals.

JAMES B. HOWE.
Counsel for Petitioners.

SAMUEL H. PILES,
GEORGE DONWORTH,
CHARLES H. FARRELL.
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Petitioners*, v. TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*	No. 593

The questions presented in this suit on the application for the writ of certiorari are the following:

I.

Did the Circuit Court of the United States for the District of Washington have jurisdiction of a suit, by two heirs at law and next of kin of a person who resided and died in the State of Washington, intestate, leaving there his entire estate, real and personal, to annul a fraudulent nuncupative will and a decree of a court of the state probating the same, procured by fraud, based entirely on perjured testimony and manufactured evidence, regular on its face, but without jurisdiction having been acquired, under which alleged will and its fraudulent probate a

stranger claims the entire estate of the decedent, where the amount involved is sufficient and the requisite diversity of citizenship for jurisdictional purposes exists, and when by the law of the state, customary and statutory, a proceeding between the same parties for the same relief can be maintained in a court of the state exercising general jurisdiction?

The Circuit Court held that it did have jurisdiction of such a suit, and rendered a decree upon the merits in favor of the petitioners. The Circuit Court of Appeals for the Ninth Circuit held that the Circuit Court did not have jurisdiction, and reversed the decree of the Circuit Court for want of jurisdiction over the subject matter of the suit, and directed the dismissal of the bill.

When a proceeding inter partes can be maintained in a state court, by whatever name the state court may be called, for the annulment of a will and its probate, a suit for the same relief may be maintained in the Circuit Court of the United States for the same state, if the other jurisdictional requisites exist.

The Circuit Court of Appeals for the Ninth Circuit, in an opinion delivered by Judge Knowles and concurred in by Mr. Justice McKenna, then Circuit Judge, said, in the case of

Richardson v. Green, 61 Fed. 423, 428:

"It should be observed also that when it is customary for such state courts to hear and determine such equitable suits a United States Court, under proper conditions, may hear them. *It is not necessary that a statute should exist authorizing the same.* The suit in the county court of Oregon in such matters is not authorized directly by any statute, but is a customary exercise of jurisdiction.* * * *

In the Broderick will case *it was admitted* if a state by statute authorized the bringing of a suit to declare a will void in its courts of law or equity, the same could be maintained in a proper case in a Federal court."

Again in the same opinion, the court said:

"Here it will be seen that if a suit is essentially a suit of a *civil nature, for equitable relief*, and it is customary to prosecute the same in *any* state court where the action arose, whether the same is a county court *or a probate court* or a District or Circuit Court, the proper Federal Court will have concurrent jurisdiction of the same with such state courts, where the amount is sufficient and the parties are citizens of different states as prescribed by the United States statutes."

In the concurring opinion, Judge McKenna, at page 435, said:

"A suit, however, may be maintained in the county court to declare the will void and revoke its probate. Clark's Heirs v. Ellis, 9 Or. 132, and cases supra. The nature of this suit is not precisely defined by the decisions, but it is certainly *inter partes*, and seems to be within the doctrine declared in Ellis v. Davis, 109 U. S. 496, 497; 3 Sup. Ct. 327. This *remedy* existing in the Oregon courts, it could be exercised by the United States Circuit Court."

The Circuit Court of Appeals therefore affirmed the decree of the Circuit Court for the District of Oregon, adjudging, in a suit brought by the heirs of a decedent, that an alleged will was forged and its probate fraudulently obtained, and enjoining the persons claiming thereunder from setting up any title to the estate of the deceased under the will and its probate.

The defendants applied to the Supreme Court for a writ of *certiorari*, upon the single ground that there was no law in the State of Oregon authorizing the maintenance of a suit in the courts of the state to annul a will and its probate; that a proceeding to annul a will and its probate was in effect one requiring the re-probate of the will; that it could be entertained by the county court only in the exercise of probate jurisdiction, and that for that reason jurisdiction did not exist in the Circuit Court of the United States for the District of Oregon to entertain a

suit for the annulment of a will and its probate. (Petition for writ of certiorari in Richardson v. Green, p. 4). Counsel for the petitioners in that case said, at page 1 of their brief:

"*The Circuit Court of the United States for the District of Oregon is without jurisdiction to decree a will invalid and cancel the same, none of the courts of the State of Oregon having jurisdiction to entertain a suit between parties for such relief.*"

The application for the writ of certiorari was denied by this court.

Richardson v. Green, 159 U. S. 264.

The denial of the writ of certiorari where the question sought to be reviewed was the jurisdiction of the Circuit Court of the United States to entertain the suit, must be taken as an affirmance by this court of the jurisdiction of that court.

This is the view which has always been taken of that case.

In Wart v. Wart, 117 Fed. 766,

the court, in following Richardson v. Green as establishing the jurisdiction of the Circuit Courts of the United States to entertain such suit, said:—

"In Richardson v. Green, 9 C. C. A. 565, 61 Fed. 423, this question is discussed at length, the conclusion reached being that under the laws of Oregon a proceeding to contest the validity of a will could be instituted after the probate thereof, and that if the adversary parties were citizens of different states and the amount involved was sufficient to meet the requirements of the judiciary act, a court of the United States could take jurisdiction over such a controversy. *An application was made to the Supreme Court for the purpose of bringing this case by means of a writ of certiorari before that court, but the application was denied. Richardson v. Green*, 159 *U. S.* 264, 15 *Sup. Ct.* 1042, 40 *L. Ed.* 142. *The denial of the writ when the question involved was that of jurisdiction,*

must be taken to be in effect an approval of the ruling of the Court of Appeals."

The court, therefore, held that the *Statutory right* given by section 3296 of the Code of Iowa to contest a will and its probate, was a right enforceable in the courts of the United States when the other jurisdictional requisites existed. The court said:—

"*A proceeding thus brought to contest the validity of a will presents a controversy between adversary parties, of which a court of the United States may take jurisdiction, provided the requisite amount is involved and a diversity of citizenship exists between the litigant parties.*"

In *Williams v. Crabb*, 117 Fed. 193.

the Circuit Court of Appeals for the Seventh Circuit, in asserting the jurisdiction of the Circuit Court to entertain a suit to set aside a will and its probate, said in following the decision in Richardson v. Green:

"*It is well settled that rights and remedies, legal or equitable provided by the statutes of the states to be pursued in the state courts may be enforced and administered in the Federal Courts*, and that the terms 'law' and 'equity' as used in the Constitution, although intended to mark a distinction between the two systems of jurisprudence as known and practiced at the time of its adoption, do not restrict the jurisdiction conferred by it to the very rights and remedies then recognized and employed, but embrace as well *not only rights newly created by the statutes of the states, but new forms of remedies to be administered in the courts of the United States according to the nature of the case. A state cannot, by its legislature, confer a substantive right or remedy in the way of a suit inter partes, upon its own citizens, that will not be available to the citizens of the other states; nor can it by any device restrict such right or remedy thus made available to enforcement in its own courts, the conditions of citizenship being such that they would otherwise be enforceable in the Federal Courts.* By any other view it would be in the power of a state by legislation to deprive citizens of other states either of the new right or remedy given by the state

statute, or of the forum granted by the Federal Constitution and laws. The citizen of another state cannot be compelled to make such an election, or to accept a remedy upon condition that he forego the constitutional forum to which he would otherwise be entitled."

Certiorari was applied for and denied in this case.

Crabb v. Williams, 187 U. S. 645.

In *Sawyer v. White*, 122 Fed. 223,

the Circuit Court of Appeals for the Eighth Circuit had before it the question of the jurisdiction of the Circuit Court to set aside a will and its probate on the ground that the execution of the will had been procured by undue influence. The court said:

"The action to contest the validity of this will *is a statutory proceeding*, under sections 4622, 4623, 1 Rev. St. Mo. 1899, p. 1102, which provide that any person interested in the probate of any will may contest its validity by a petition to the Circuit Court of the state, filed within five years after the will is probated. * * *

As the parties to this action were citizens of different states the Federal Court had jurisdiction to hear and determine this issue under the familiar rule that rights created and remedies provided by the statutes of a state to be pursued in the state court may be enforced and administered in the national courts either at law, in equity or in admiralty, as the nature of the rights or remedies may require. Darragh v. H. Wetter Mfg. Co., 78 Fed. 7, 14, 23, C. C. A. 609, 616; Gaines v. Fuentes, 92 U. S. 10, 20, 23, L. Ed. 524; Richardson v. Green, 9 C. C. A. 565, 571, 578, 61 Fed. 423, 429, 435; Brodhead v. Shoemaker (C. C.) 44 Fed. 518, 11 L. R. A. 567; in re Stutsman County (C. C.) 88 Fed. 337, 341; Ellis v. Davis, 109 U. S. 485, 497, 3 Sup. Ct. 327, 27 L. Ed. 1006; Railway Co. v. Whitton, 13 Wall. 270, 278, 287, 20 L. Ed. 571; Cummings v. Bank, 101 U. S. 153, 157, 25 L. Ed. 903; Davis v. Gray, 16 Wall. 203, 221, 21 L. Ed. 447; Broderick's Will, 21 Wall. 503, 520, 22 L. Ed. 599; Gormley v. Clark, 134 U. S. 338, 348, 10 Sup. Ct. 554, 33 L. Ed. 909; Cowley v. Railroad Co., 159 U. S. 569, 582, 16 Sup. Ct. 127, 40

L. Ed. 263; National Surety Co. v. State Bank of Humboldt (C. C. A.) 120 Fed. 593."

It is clear that the courts of the United States, other than the present Circuit Court of Appeals for the Ninth Circuit, understood when they followed the decision in Richardson v. Green, 61 Fed. 423, that that decision held that when a proceeding could be maintained in the courts of a State to annul a will and its probate, a suit to enforce the same rights could be maintained in the Circuit Court of the United States sitting in such State, and that it was immaterial whether the right to maintain such a proceeding in the courts of the State is created by *a customary exercise of jurisdiction, or by statute*. This is certain, because the jurisdiction upheld in Wart v. Wart, 117 Fed. 766, was founded upon Section 3296 of the Code of Iowa; in Sawyer v. White, 122 Fed. 223, the jurisdiction upheld was founded upon sections 4622, 4623, 1 Rev. St. Mo. 1899, p. 1102; and in Williams v. Crabb the jurisdiction was founded upon section 7 of chapter 148, Rev. St. of Ill.

In *Richardson v. Green*, 61 Fed. 423,

the claim was made that the Circuit Court of the United States for the District of Oregon had no jurisdiction to entertain such a suit, *because there was no statute in Oregon authorizing a court of the state to entertain such a suit*. At page 428 the court said:

"It is not *necessary* that a statute should exist authorizing the same. * * * In the Broderick Will case *it was admitted* if a *state statute authorized* the bringing of a suit to declare a will void in its courts of law or equity, the same could be maintained in a proper case in the Federal Court."

It was *conceded* that if there *was a statute* of the state authorizing such a suit, then the Circuit Court of the United States had concurrent jurisdiction with the courts of the state. It was held by the court that if it was customary for the courts of the state to entertain such

suits, then, even if there was no statute, the Circuit Court of the United States had *concurrent jurisdiction.*

In the case at bar the Circuit Court of Appeals holds that *because there is a statute* which authorizes a proceeding *inter partes* in the Superior Courts of the State of Washington exercising general jurisdiction, the Circuit Court of the United States for the District of Washington is *excluded from exercising concurrent jurisdiction with the state court.*

In Oregon the only court of the State having jurisdiction to entertain a contest of a will admitted to probate was a county court.

It is important, therefore, to determine the exact jurisdiction of the county court of Oregon.

"The county court shall have the *jurisdiction pertaining to probate courts* and Boards of County Commissioners, and such other powers and duties *and such civil jurisdiction, not exceeding the amount of value of* $500.00, and such criminal jurisdiction not extending to death or imprisonment in the penitentiary, as may be prescribed by law."

Article 7, Section 12, Constitution of Oregon.

"The county court is created by the organic law of the state (Art. 7 Const.), and its organization is provided for *and its jurisdiction limited and defined by such organic law* and the provisions of this title * * *"

Sec. 893 Hill's Annotated Laws of Oregon.
Sec. 867 Deady's General Laws of Oregon.

"The county court has jurisdiction, but not exclusive, of *actions at law* and all proceedings therein and connected therewith, where the claim or subject of the controversy *does not exceed the value of five hundred dollars* * * *"

Sec. 894 Hill; 868 Deady.

"The county court *has exclusive jurisdiction in the first instance pertaining to a court of probate*, that is,

1. *To take proof of wills.*

2. To grant *and revoke letters testamentary, of administration* or of guardianship. * * *"

Sec. 895, Hill; 869 Deady.

It thus appears that not only was there no grant to the county court of Oregon of equity jurisdiction, but all civil jurisdiction granted to the county court, outside of its probate jurisdiction, was expressly limited to five hundred dollars, and that jurisdiction was only conceded to it in actions at law. It is plain, therefore, that the authority for upholding the jurisdiction of the Circuit Court of the United States for the District of Oregon in a suit in equity, in the case of Richardson v. Green, was not based upon the proposition that the county court could entertain a suit either at law or in equity to annul a will and its probate. *The authority for upholding the jurisdiction of the Circuit Court in that case rested solely on the ground that the proceeding was inter partes.* This clearly appears from the cases cited by Judge McKenna to establish the character of the proceeding customarily instituted in the county courts of Oregon.

In Heirs of Clark v. Ellis, 9 Ore. 128,

the Supreme Court of Oregon said:

"The chief objection made upon the argument of the demurrer was that the county court had no jurisdiction of the subject matter, that the jurisdiction to annul wills *is not a matter pertaining to probate*, and is not vested in the county court either by the Constitution or by statute, and that original jurisdiction of such causes belongs to the Circuit Court. * * * The jurisdiction of the county court in a proper proceeding to set aside a will and to revoke letters testamentary, is not questioned. * * * *The re-probate* required when the validity of the will is attacked, the issue formed in every such proceeding of which the party propounding the will has the *onus probandi, is a subject matter of the same jurisdiction as the probate of a will of which the county court has the*

exclusive jurisdiction in the first instance under the statute above cited."

We now ask the attention of the court to some of the decisions upholding the jurisdiction of the Circuit Court of the United States in this suit.

Broderick's Will, 21 Wall. 503, (Kieley v. McGlynn).

This court dismissed a bill filed in the Circuit Court of the United States for the District of California, instituted to set aside a will and its probate. The statutory time for attacking the will and its probate in the probate court had elapsed long prior to the institution of the suit. No proceeding could then have been instituted in the probate court to annul the will and its probate, and this court held that none could be instituted in a Circuit Court of the United States, because none could be instituted in a court of the state. It is perfectly clear from the opinion that had there been no question of the statute of limitations, and had the statute of 1862 of California been in force at the time of the probating of the will, which authorized the District Courts of California to entertain proceedings to set aside wills and their probate on the ground of fraud, the jurisdiction of the Circuit Court of the United States would have been sustained. That such is the case clearly appears from the following language of the opinion:

"The statute of 1862 has been referred to, which gives to the District Courts of California power to set aside a will obtained by fraud or undue influence, or a forged will, and any probate obtained by fraud, concealment or perjury. Whilst it is true that alterations in the jurisdiction of the state courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States so long as the equitable rights themselves remain, *yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the courts of the state. And this is probably a case in which an enlargement of equitable*

rights is effected, although presented in the form of a remedial proceeding. Indeed, much of *equitable jurisdiction* consists of better and more effective *remedies* for attaining the rights of parties. But the statute referred to cannot affect this suit, inasmuch as the statute of limitations would still apply in full force, and would present a perfect bar to the suit."

Gaines v. Fuentes, 92 U. S. 10.

This court having before it the question whether a Circuit Court of the United States sitting in equity in the State of Louisiana had jurisdiction to entertain a suit to annul a forged will and its fraudulent probate, said:

"The suit in the parish court is not a proceeding to establish a will, but to annul it as a muniment of title, and to limit the operation of the decree admitting it to probate. *It is in all essential particulars a suit for equitable relief*—to cancel an instrument alleged to be void, and to restrain the enforcement of a decree alleged to have been obtained upon false and insufficient testimony. *There are no separate equity courts in Louisiana, and suits for special relief of the nature here sought are not there designated suits in equity, but they are none the less essentially such suits, and if by the law obtaining in the state, customary or statutory, they can be maintained in a state court, whatever designation that court may bear, we think they may be maintained by original process in a Federal court, where the parties are on the one side citizens of Louisiana and on the other citizens of other states.*"

Ellis v. Davis, 109 U. S. 485, 496.

"Where provision is made by the laws of a state, as is the case in many, for trying the question of the validity of a will already admitted to probate by a litigation between parties in which that is the sole question, with the effect, if the judgment shall be in the negative, of rendering the probate void for all purposes as between the parties and those in privity with them, it may be that the courts of the United States have jurisdiction under existing provisions of law, to administer the remedy and to establish the right in a case where the controversy

is wholly between citizens of different states. The judicial power of the United States extends, by the terms of the Constitution, 'to controversies between citizens of different states,' and on the supposition, which is not admitted, that this embraces only such as arise in cases 'in law and equity,' it does not necessarily exclude those which may involve the exercise of jurisdiction in reference to the proof of validity of wills."

Byers v. McAuley, 149 U. S. 608.

A suit was instituted by persons claiming to be the heirs at law and next of kin of a decedent, against the administrator of the estate with the will annexed. It was claimed by the complainants that one Mary McAuley left an instrument in writing in the following words:

"By request of my dear brother, my house on Duquesne Way is to be sold at my death and the proceeds to be divided between the Home of the Friendless and the Home for Protestant Destitute Women."

This instrument had been admitted to probate as the will of Mary McAuley, and letters of administration with the will annexed had been issued to one Byers. Byers proceeded with the administration of the estate until it was ready for distribution. The day before the hearing of the application for distribution a bill was filed in the Circuit Court of the United States for the Western District of Pennsylvania, by citizens of states other than Pennsylvania. The bill set forth the death of Mary McAuley, that there were two classes of claimants to the estate, first and second cousins, that the so-called will was null and void, and that there was a large amount of personal estate in the hands of the administrator. The prayer was that the will and the probate be declared void and of no effect, that the administrator be enjoined from collecting the rents, that he be ordered to make an account of the assets, and that the assets be distributed among the complainants and all parties legally entitled thereto. The administrator filed a plea setting up the proceedings

in the Orphans' Court. The plea was overruled. The Circuit Court entered a decree in accordance with the prayer of the bill. This court reversed so much of the decree of the Circuit Court as undertook to determine the rights of parties, as between themselves, who were citizens of the same state, but affirmed so much of the decree of the Circuit Court as adjudicated the rights of persons possessing the requisite diversity of citizenship. The court held that complainants had no interest in the real estate mentioned in the instrument which had been probated as the will of Mary McAuley. This holding, however, was based upon the ground that the instrument, though void as a will, was valid as a declaration of trust.

If the decision of the Court of Appeals in the case at bar is correct, then this court, in the case of Byers v. McAuley, would have ordered that cause remanded and dismissed. It would not have affirmed so much of the decree of the Circuit Court as adjudicated the rights of parties before the court who possessed the requisite diversity of citizenship.

Cowley v. Northern Pacific Railroad Company, 159 U. S. 569, 582.

A judgment had been entered upon a stipulation made by the attorneys of appellant. Thereafter, without taking any proceeding in the original suit, appellant instituted an original proceeding in the District Court of the Territory of Washington to set aside the judgment in the former case, on the ground of fraud. The proceeding begun in the territorial court was afterwards proceeded with in the Superior Court of the State of Washington for Spokane County, and then removed to the Circuit Court of the United States, which entered a decree dismissing it. The Circuit Court held that appellant should have applied to the state court by petition or motion in the original case, and should not have brought an independent suit; that after the case had been removed from the

state court to the Circuit Court of the United States it was treated as a suit in equity, and that a court of the United States sitting in equity could not afford appellant any relief. This court, in reversing the decree of the Circuit Court, said:

"Although the *statute of a state* or territory may not restrict or limit the equitable jurisdiction of the Federal Courts, and may not directly enlarge such jurisdiction, *it may establish new rights or privileges* which the *Federal Courts may enforce on their equity* or admiralty side, precisely as they may enforce a new right of action given by statute on their common law side." (Citing Broderick's Will, 21 Wall. 503).

Bardon v. Land & River Improvement Company, 157 U. S. 327.

"We remarked in Gormley v. Clark, 134 U. S. 338, 348, that while the rule was well settled that remedies in the courts of the United States at common law or in equity, according to the essential character of the case, are uncontrolled in that particular by the practice of the state courts, yet an enlargement of equitable rights by state statutes may be administered by the Circuit Courts of the United States as well as by the courts of the state, *and when the case is one of a remedial proceeding, essentially of an equitable character, there can be no objection to the exercise of the jurisdiction.* Kieley v. McGlynn, 21 Wall. 503, 520." (Broderick's Case).

Smythe v. Ames, 169 U. S. 466, 517.

"A party, by going into a National Court, does not, this court has said, lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality; that the wise policy of the Constitution gives him a choice of tribunals."

Darragh v. Wetter Mfg. Co., 78 Fed. 7, 14.

"Rights created or provided by the statutes of the states to be pursued in the state courts, may be enforced and administered in the Federal Courts, either at law,

in equity or in admiralty, as the nature of the new rights may require."

Sheffield Furnace Co. v. Witherow, 149 U. S. 574, 579.

"It may well be affirmed that a state, by prescribing an action at law to enforce even statutory rights, cannot oust a Federal Court sitting in equity of its jurisdiction to enforce such rights, provided they are of an equitable nature."

Leighton v. Young, 52 Fed. 439, 442.

"Where a state statute creates a right and prescribes a mode of proceeding to enforce it in the state courts, the courts of the United States in that state will enforce the right, but not always in the mode prescribed for enforcing it in the state courts."

It being clear that whenever a state statute creates an equitable right the Circuit Courts of the United States will have jurisdiction in equity to enforce that right, the question is, has the State of Washington provided an equitable right which can be enforced in the courts of that state for the annulment of a will and its probate?

In Broderick's case, *supra*.,

this court, speaking of the right of action provided by the act of 1862 of California, for the annulment of a will, said:

"This is probably a case in which an enlargement of *equitable rights is effected, although presented in the form of a remedial proceeding.* Indeed, much of equitable jurisdiction consists of better and more effective remedies for attaining the rights of parties."

Gaines v. Fuentes, *supra*.

Suits to annul and cancel wills on the ground of fraud are not in Louisiana designated *suits in equity*, but this court in that case said "*but they are none the less essentially such suits.*"

The statute of Washington providing for the contest of a will is as follows:

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issues shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will."

Pierce's Washington Code, sec. 2395. (Ball. Code, sec. 6110).

"Upon the filing of the petition referred to in the next preceding section a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the territory (state) or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted."

Pierce's Washington Code, sec. 2396. (Ball. Code, sec. 6111).

These sections of the statute create an equitable right in the form of a remedial proceeding. The Supreme Court of Washington has so decided.

"*Proceedings to contest a will are in their nature equitable, and trial by jury of issues of fact therein is not a matter of right.*"

Clayson v. Clayson, 26 Wash., 253.

In the State of Washington there are no probate courts. The Superior Courts of the state are courts of

general jurisdiction. Prior to statehood there were probate courts in the Territory of Washington. The constitution of the state (Sec. 10, Art. 27), provided for the continuance of probate courts until the second Monday of January, 1891, and that until that time the Superior Courts should exercise appellate and revisory jurisdiction over the probate courts.

In *Ball et al. vs. Clothier et al.*, decided by the Supreme Court of Washington March 12, 1904 (34 Wash. ——, not yet published), the court said:

"When the Constitution was adopted the Superior Court was vested with general jurisdiction, such as was exercised by the Territorial District Courts, and also with jurisdiction in probate matters, and the Probate Court as an independent tribunal was abolished."

In Filley v. Murphy, 30 Wash. 1, 5,

the Supreme Court of the State said:

"In this state we have no probate court, properly speaking, as distinguished from the court that entertains jurisdiction of other matters. * * * Matters pertaining to probate are referred to what is called 'probate procedure,' as distinguished from what is denominated 'civil' or 'criminal' procedure, but when the court sitting in a probate proceeding discovers in a petition the statement of facts which forms the basis of a controversy, we see no reason why it may not settle the issues thereunder, when an appearance has been made thereto, and then proceed to try it in a proper manner, as *any other civil cause*."

In Browder v. Phinney, 30 Wash. 74.

the court said, speaking of the Superior Court:

"It is not *a law court nor an equity court nor a probate court*, but it is all the time *the Superior Court of general jurisdiction*, empowered to try all these differently termed causes *under the title of a civil action;* and when it has once acquired jurisdiction of that *civil action*, it may proceed in an orderly way to determine equitable, legal or probate controversies."

In State ex rel. Stratton v. Tallman, 25 Wash. 295, the Supreme Court of the state, speaking of the same alleged will which is involved in this suit when the Attorney General of the state sought to attack its probate by motion, said:

"There is a plain procedure which is speedy and adequate, pointed out in Sec. 6110 Ball. Code, by which issues may be properly made up and tried and determined, respecting all questions affecting the regularity of the execution or of the validity of the will, *and the Superior Court entertaining such a suit* may fully protect such rights in the estate by such *stay of proceedings in the procedure in probate* as may be necessary or effective."

In Higgins v. Nethery, 30 Wash. 239,

the language of the court is:

"This *action* was begun by the appellants on February 15, 1901, to set aside the will upon the grounds that the deceased did not make it, that the same is void because the testator at the time the will was made was not of sound mind * * *. *On the trial the court found the facts against the contestants*, and dismissed the *action*. * * * When the cause was called for trial, appellants *(plaintiffs below)* requested the court to impose the burden of proof upon the *defendant*. * * * When the record shows, as it does in this case, that the court had jurisdiction, and all the facts appear to show *prima facie* a valid will, the order of the court admitting the will to probate must have some force. For that reason the burden must be upon the *plaintiffs* to show that the will was invalid by reason of the facts alleged, namely, that the testator did not execute the will, or that he was not of sound mind, or was under undue influence at the time he made it. The order admitting the will to probate is not *conclusive* of the facts necessary to support it, but when the facts appear of record they must be taken as true until the contrary is shown."

In Reformed Presbyterian Church v. McMillan, 31 Wash. 643,

the Supreme Court said:

"The Constitution does not make the Superior Courts probate courts. On the contrary, it vests the Superior Courts with jurisdiction 'of all matters of probate,' hence the court is not shorn of its general powers simply because the cause before it may be one *which was cognizable formerly in a court of probate.* It possesses in every case and at all times its powers as a court of superior and general jurisdiction, and among these is the power to hear and determine the question to whom a bequest made by a decedent rightfully belongs. *A statute, therefore, can neither add to nor take away the power, and it is immaterial to inquire whether or not one conferring such power is in existence.*"

These decisions of the Supreme Court of the State of Washington demonstrate that the proceeding to contest a will and its probate is a suit in a court of general jurisdiction.

In the opinion of the Court of Appeals in this suit the court said that the Supreme Court of the State, in denominating the proceeding to contest a will, provided by the state statute, a "*suit*," manifestly used an inapt expression (R. p. 1445).

In Weston v. City Council of Charleston, 2 Pet. 449, this court, speaking by Chief Justice Marshall, in defining the word "suit," said:

"The term is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him. *The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit.*"

It is respectfully submitted that it would be hard to provide a proceeding which would have more of the characteristics of a suit than the proceeding provided by the statute of Washington, and in determining that it was a "suit" the Supreme Court of the state not only followed the rule announced by this court, but as the highest author-

ity in the state announced a rule for the courts of the state in construing a statute of the state. The Supreme Court of the state, in designating the proceeding a "suit," was not deciding that it was a "suit" over which the National Courts would have jurisdiction. It was only deciding in construing the State Statute that the proceeding was a "suit" to be entertained by the Superior Courts of the state in the exercise of their general jurisdiction. That determination is conclusive. As then this suit could be maintained in the courts of the state, it can be maintained in the Court of the United States sitting in the same state, the other jurisdictional requirements existing.

In Woerner on Administration (2nd Ed.), Sec. 156, p. 357,

the law is thus stated:

"While the probate of a will *ex parte* is *in rem*, and, not being between parties, cannot be removed to the Federal Courts, yet, where such will is contested in pursuance of statutory provisions, and becomes a suit *inter partes*, residing in different states, the Federal Courts take jurisdiction as they would in any other controversy between the parties."

Brodhead, v. Shoemaker, 44 Fed. 518.
Everhart v. Everhart, 34 Fed. 82.
Kirby v. R. R. Co., 106 Fed. 551.

If, in Richardson v. Green, the Circuit Court of the United States of the District of Oregon had jurisdiction in equity of a suit to annul a will and its probate, although the only State Court in which a contest might be instituted had no jurisdiction in equity, and none at law where the amount involved exceeded five hundred dollars, then the jurisdiction of the Circuit Court in that case was founded upon the proposition that an equitable right had been created by a state custom, and a Court of the United States could enforce that right in equity, regardless of the remedy existing in the Courts of the state, and regardless of the

character of the Court of the state in which it might be enforced, provided the right to be enforced was one which was to be enforced *inter partes*.

Ex parte McNeil, 13 Wall. 236, 243.

"A state law cannot give jurisdiction to any Federal Court, but that is not a question in this case. A state law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper federal tribunal, whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not *confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy.* This principle may be laid down as axiomatic in our national jurisprudence. A party forfeits nothing by going into a federal tribunal."

If the customary exercise of jurisdiction by a county court in Oregon in the exercise of probate jurisdiction over a proceeding *inter partes* to annul a will and its probate, was sufficient to authorize the Circuit Court of the United States in Oregon, sitting in equity, to take jurisdiction of a suit to annul a will and its probate, how can it be claimed that the customary and statutory exercise of jurisdiction by the Superior Courts of the State of Washington over like proceedings can deprive the Circuit Courts of the United States sitting in Washington of jurisdiction to entertain a similar suit?

If the statute of Washington and the decisions of the Supreme Court of the state do not make it clear that the contest of a will and its probate is a proceeding *inter partes*, and is a suit of such a character as authorizes a Circuit Court of the United States to take jurisdiction when instituted by parties possessing the requisite diversity of citizenship, and where the amount involved is sufficient, we are unable to understand upon what possible theory the decision in

Richardson v. Green, 61 Fed. 423,

could have been rendered and approved by this court.

We submit that it is not competent for the State of Washington to provide a remedy by which a will, after its probate, can be attacked by a proceeding *inter partes* in a court of general jurisdiction, that the procedure should be of an equitable character, that it should be a suit, a civil action, but that a party claiming such remedy must resort exclusively to Courts of the state or give up his right to redress, although by reason of his citizenship

> "the wise policy of the Constitution gives him a choice of tribunals."

We submit that no case can be found denying the jurisdiction of a Circuit Court of the United States over a suit to annul a will and its probate, instituted by parties possessing the requisite diversity of citizenship, where the amount involved is sufficient for jurisdictional purposes, when by the law of the state where the Circuit Court of the United States is held, a proceeding *inter partes*, other than by an appeal, can be maintained in a State Court of general jurisdiction to obtain the same relief.

II.

The Circuit Court of the United States for the District of Washington, under the allegations of the bill, had jurisdiction in equity to entertain the suit to set aside the will on the ground of fraud, and the decree probating the same because procured by fraud, and which, if allowed to stand, would constitute muniments of title, if the will conveyed, as claimed by Marie Carran, realty as well as personalty.

In Cowley v. Northern Pacific R. R. Co., 159 U. S. 569, 580,

this court distinguished the cases of

Gaines vs. Fuentes, 92 U. S., 10,

and

Barrow v. Hunton, 99 U. S., 80,

and said:

"The distinction between the two cases above cited is that in the latter case the judgment was impeached for a matter of form, and in the former case for the *falsity and insufficiency of the testimony* upon which the will was admitted to probate; in other words, *for a fraud connected with the probating of the will.*'

In Marshall v. Holmes, 141 U. S. 590,

this court cited Gaines v. Fuentes, Barrow v. Hunton, Johnson v. Waters, *supra.*, and Arrowsmith v. Gleason, 129 U. S. 86, and said:

"These authorities would seem *to place beyond question the jurisdiction of the Circuit Court to take cognizance of the present suit, which is none the less an original, independent suit because it relates to judgments obtained in the court of another jurisdiction.* While it cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in the state court. It would simply take from him the benefit of judgments obtained by fraud."

That a court of the United States has jurisdiction of a suit to enjoin a person from availing himself of a judgment obtained by fraud, based upon false evidence and rendered *ex parte*, would seem to be perfectly clear.

Howard v. Cordova, 177 U. S. 609.
Graver v. Faurot, 76 Fed. 257.
Arrowsmith v. Gleason, 129 U. S. 86.
Marshall v. Holmes, 141 U. S. 590.

Davenport v. Moore, 74 Fed. 945.
Johnson v. Waters, 111 U. S. 640.

Did the Circuit Court of the United States for the District of Washington have jurisdiction of a suit between the parties to the record to construe the alleged nuncupative will and determine it invalid on its face, on the ground that the section of the act of the Territory of Washington under which its validity is asserted is void because in conflict with section 6 of the act of Congress entitled "An Act to establish the Territorial Government of Washington"?

The law of Washington, approved March 20, 1895, (Laws of Washington, 1895, p. 197), is as follows:

"Section 1. When a person dies seized of lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein in fee or for the life of another, *his title shall vest immediately in his heirs or devisees*, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or any other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent; *provided, that no person shall be deemed a devisee until the will has been probated.* The title and right to possession of such lands, tenements or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the executor or administrator when appointed, and persons lawfully claiming under such executor or administrator; *and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements or hereditaments, and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the executor or*

administrator, and those lawfully claiming under such executor or administrator."

In construing this law, the Supreme Court of Washington, in the case of

Griffin v. Warburton, 23 Wash. 231,

said:

"Under the statute as it now exists, the heirs upon the death of an ancestor become vested at once with the full property, subject only to the claims of the ancestor's creditors and the necessary costs and charges of administration. *They have the right of possession against all the world, except the right of the administrator while these claims are being adjusted and satisfied.* But the administrator's right to the possession of the property of an estate is temporary and limited to the purposes of administration. When the claims of creditors are paid or barred, and the costs and charges of administration are satisfied, the estate is for all practical purposes fully administered upon, the right of possession in the administrator terminates, and the right of the heirs to the residue of the estate in his hands becomes absolute. The heirs are then entitled to have this residue delivered over to them as their own property, under the law, and it is made the duty of the administrator by the statute to surrender the property to them. This duty they can enforce by obtaining a decree of the court directing its performance. As such a decree, however, neither creates their title nor their right of possession to the property, a distribution made without it cannot be invalid."

It is clear, therefore, that if the alleged will was invalid, these petitioners were the owners of the estate of the deceased, and the realty vested in them immediately. They could not, however, maintain ejectment against the administrator, for the statute protected his possession. They could not maintain ejectment against Marie Carrau, because she was not in possession. The administrator held the property in trust for the heirs. Marie Carrau asserted a claim to the property under the alleged will and its fraudulent decree of probate. A court

of equity was the only court which could afford petitioners any relief, by cancelling the alleged will and enjoining Marie Carrau from setting up any claim under it. The bill invoked the jurisdiction of the Circuit Court, if it should be found that the will was made, to determine that it was void upon its face because the estate bequeathed exceeded in value the sum of two hundred dollars. It is respectfully submitted that a Circuit Court of the United States sitting in equity has jurisdiction of a suit to construe a will and to determine it invalid, where the party instituting such suit has no adequate remedy at law.

Potter v. Couch, 141 U. S. 296.
Jones v. Habersham, 107 U. S. 174.
Ware v. Wisner, 50 Fed. 310.
Brigham v. Kenyon, 76 Fed. 30.
Sherman v. American Congregational Ass'n., 113 Fed. 609.
Waterfield v. Rice, 111 Fed. 625.
Handley v. Palmer, 103 Fed. 39.
Colton v. Colton, 127 U. S. 300.
Boman vs. Boman, 49 Fed 329

A nuncupative will, under the law of Washington, is invalid where the estate bequeathed exceeds two hundred dollars.

Section 6 of the Organic Act of the Territory of Washington, approved March 2, 1853, (U. S. Stats. at Large, Vol. 10, pp. 172, 175), is as follows:

"Section 6. * * * To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, *every law shall embrace but one object, and that shall be expressed in the title.*"

The Territorial Legislature, at its first session, in 1854, enacted a statute entitled:

"An Act establishing probate courts for the Territory of Washington."

Laws of 1854, Territory of Washington, p. 309.

At the same session the legislature enacted a statute entitled:

"An Act relating to Wills."

Laws of 1854, p. 312.

Section 23 of this act provides:

"No nuncupative will shall be good when the estate bequeathed *exceeds the value of two hundred dollars, nor* unless the same be proven by two witnesses. * * *"

No change was attempted to be made in the amount of an estate which could be bequeathed by nuncupative will, until November 11, 1873, when the legislature of the Territory, by an act approved on that date, entitled:

"An Act *defining the jurisdiction and practice* in the probate courts of Washington Territory,"

omitted the word "nor" after the words "two hundred dollars" and before the word "unless," and thereby, if the repeal was valid, removed the limitation on the amount of an estate which might be bequeathed by nuncupative will,

Laws of 1873, pp. 252, 259,

making the section read as follows:

"Section 33. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, (———) unless the same be proved by two witnesses. * * *"

Section 33 of the act of March 11, 1873, was re-enacted by the Territorial Legislature by an act approved December 1, 1881, entitled:

"An Act *defining the jurisdiction and practice* in the probate courts of Washington Territory."

Pierce's Code of Washington, p. 355.

There is nothing in the title of the act of November 11, 1873, nor in the title of the act of December 1, 1881, relating in any manner to the subject of wills. The sec-

tion in the body of each of those acts, re-enacting section 23 of the act of 1854, but omitting the word "nor," and by such omission repealing the limitation imposed by section 23 of the act of 1854 upon the amount of an estate which might be bequeathed by nuncupative will, is in conflict with the provisions of section 6 of the Organic Act of the Territory of Washington, which required that every law of the territory—

"—shall embrace but one object, and that shall be expressed in the title."

By leaving the word "*nor*" after the words "two hundred dollars" and before the word "unless," out of Section 33 of the act entitled "An act defining the jurisdiction and practice in the probate courts of Washington Territory," not only was the limitation upon the amount of an estate which might be bequeathed by nuncupative will, which had been imposed by Section 23 of the Act of 1854, removed, but when the estate did not exceed two hundred dollars the formalities required by 29 Stat. of Charles II. and by the Act of 1854 were entirely dispensed with. Could a legistor, hearing only the title of the act read, possibly contemplate that such a vital change in the law of wills was being made, in an act entitled "An Act defining the jurisdiction and practice in the probate courts of Washington Territory?" Would he not necessarily conclude upon hearing the title read that the bill was one to amend the Act of 1854, entitled "An Act establishing probate courts for the Territory of Washington," instead of "An Act relating to wills?" The vice in the act is that the title not only does not give notice that the legislature was dealing with the subject of wills, but it is actually misleading because it purports to deal only with the jurisdiction and practice of courts.

There has been no legislation relating to nuncupative wills since the Territory of Washington became a state.

That the title

"An Act *defining the jurisdiction and practice* in the probate courts of Washington Territory."

is not sufficiently broad to cover a provision repealing the limitation of two hundred dollars which had been imposed upon estates bequeathed by nuncupative wills, there is no doubt. There is in the title no indication that the legislature of the territory was legislating upon the subject of wills. Legislation in reference to that subject was therefore void, because the title of the act did not conform to the requirements of the organic law of the territory.

State v. Tieman, 73 Pac. Rep. 375; 32 Wash. 294.
State v. McDonald, 64 Pac. 912; 25 Wash. 122.
Sengfelder v. Hill, 21 Wash. 371.

In this case the court said:

"The title of the act is 'An Act to protect innocent purchasers of *community* real property,' which under section 19 of Article 2 of the state constitution *is too narrow to include within the terms of the act property held by a title other than that specially mentioned.*"

Warburton v. White, 18 Wash. 511.
Howlett v. Cheatham, 17 Wash. 626.
National Bank of Commerce v. Seattle Pickle Works, 15 Wash. 126.
Percival v. Cowychee Dist., 15 Wash. 480.

In Howard v. Schneider, 62 Pac. 435, 10 Kan. App. 137, the Supreme Court of Kansas held:

"Chapter 203, laws of 1891, entitled 'An Act to abolish survivorship in *joint tenancy*' is unconstitutional, in so far as it attempts to abolish survivorship in estates *in entirety*, said subject not being included in the title."

In State v. Bankers' & Merchants' Mutual Benefit Ass'n., 23 Kan. 501,

Mr. Justice Brewer, then upon the Supreme Bench of Kansas, said:

"The Constitution has said that the title must be an index to the law, and the courts may not sanction as a valid enactment any part of a statute to which the finger of the title does not point. If we should attempt to enlarge the title, we should defeat the very purpose of the constitutional prohibition, which was to make the title to a bill notice of all contemplated legislation."

Citizens' Savings Bank v. Auditor General, 82 N. W., 214 (Mich.); 123 Mich. 511.
State v. Board, 41 Pac. 145; 22 Nev. 399.
Van Houten v. People, 43 Pac. 137; 22 Colo. 53.
State ex rel. Cooper v. Springer, 46 Atl. 589 65 N. J. L. 161.

In this case the court said:

"To comply with the Constitution, the title of a proposed law must give reasonable intimation of the matters under consideration; and as the title must limit the enactment to matters within its scope, it follows that the legislation on which rests the present application is void."

Gray, Atty. Gen., v. Newark Co., 46 Atl. 606; 65 N. J. L. 51.
Walling v. Mayor, 44 Atl. 864; 64 N. J. L. 203.
Harris v. State, 36 S. E. 232; 113 Ga. 725.
Hayes v. Storms, 45 Atl. 809; 64 N. J. L. 514.
In re Brean, 14 Colo. 401.
Rex Lumber Co. v. Reed, 77 N. W. 572; 107 Iowa 111.
Frazier v. Georgia R. R. & Banking Co., 28 S. E. 662, 101 Ga. 77.
Folkner v. Dorland, 24 Atl. 403; 54 N. J. L. 409.
Brooks v. People, 24 Pac. 553; 14 Colo. 413.
Ragio v. State, 6 S. W. 401; 2 Pickle (Tenn.) 272.
Thomas v. Wabash Ry., 40 Fed. 126.
Case v. Loftus, 43 Fed. 839.
Crowther v. Fidelity Ins. Co., 85 Fed. 41.

In *People v. Congdon*, 43 N. W. 986, 77 Mich. 351, the body of the act provided for *articles of adoption*, and that the child adopted should be the *heir* of the persons adopting. The court said:

"The law is plainly in violation of the constitutional provision that the object of the act shall be expressed in its title. The title of this act as passed and adopted is, 'An Act to provide for the *changing the names of minor adopted children and of other persons*.'"

In State v. Hancock, 32 Atl. 689, 58 N. J. L. 139, the syllabus, which is by the court, is as follows:

"The title of an act being 'An Act to tax *intestates' estates*, gifts, *legacies* and collateral inheritance, in certain cases,' held, that the title did not express a purpose to tax *real estate devised*, and the provisions for that purpose were therefore invalid."

The Code of 1881 was not a re-enactment of former laws, but was a compilation of such laws as had theretofore been legally enacted, and of such laws as were enacted at the special session of the legislature in 1881.

Baer v. Choir, 7 Wash. 631, 637.
Gractz v. McKenzie, 3 Wash. 194, 197.
Northern Pacific R. R. Co. v. Ellison, 3 Wash. 225.

We have examined the original enrolled act in the office of the Secretary of State of the State of Washington, which was passed at the session of 1881, and approved December 1, 1881, entitled:

"An Act defining the jurisdiction and practice in the probate courts of Washington Territory."

Its sections begin with section 1297 and end with section 1686, of the Code of 1881. Its title is also set forth in Pierce's Washington Code at page 355. The law of Washington, therefore, upon the subject of nuncupative wills remains as enacted by the legislature of 1854. That legislature imposed a limitation of two hundred dollars

upon estates which might be bequeathed by nuncupative will.

The alleged nuncupative will under which Marie Carrau claims the entire estate asserts that the estate bequeathed is worth "many thousands of dollars." It is therefore void upon its face.

Stricker v. Oldenburg, 39 Iowa 653.
Pierce v. Pierce, 46 Ind. 86.

The Circuit Court of the United States certainly had jurisdiction of a suit instituted by aliens against Marie Carrau, a citizen of the State of Washington claiming under the alleged will, to construe the alleged will, to determine it invalid, and to enjoin her from making any claim under it.

IV.

Did the Circuit Court of the United States for the District of Washington have jurisdiction of a suit between the parties to construe the alleged nuncupative will and determine that it did not convey real estate, and that, therefore, even if valid, the decedent died intestate as to such real estate?

The authorities cited under proposition III clearly establish the jurisdiction of a court of the United States sitting in equity to construe a will.

In *Byers v. McAuley, supra*,

this court held that the instrument which had been probated by the Orphans' Court of Pennsylvania as a last will and testament, could not stand as a will, but that it was good as a declaration of trust.

The statute of Washington in reference to nuncupative wills did not create a right to make a nuncupative will. It simply required that nuncupative wills should be made with more formality than was required by the common law, and limited the amount of an estate which might be *bequeathed*. Until the Statutes of Wills (32 and 34

Henry VIII.) real estate could not be devised. The Statute of Wills required wills of lands to be in writing. Nuncupative wills were left as at common law, and they could dispose of personal property only. By the Statute of 29 Charles II. restrictions were imposed upon them. They were abolished in England by Act I. Vict., c. 26 (1837), except in case of soldiers in service and seamen at sea. In America they have generally been abolished, except in the case of soldiers in service and sailors at sea, or else greater restrictions have been imposed upon them and the amount which might be *bequeathed* limited to small sums. Washington has imposed great restrictions, limited the amount and allows only bequests.

A nuncupative will does not convey real estate.

In re Davis' Will, 79 N. W. Rep. 761; 103 Wis. 455.
Sadler v. Sadler, 60 Miss. 251.
McLeod v. Dell, 9 Fla. 451.
Smithdeal v. Smith, 64 N. C. 52.
Palmer v. Palmer, 2 Dana 390.
Page v. Page, 2 Rob. (Va.) 424.
Lewis v. Aylott, 45 Tex. 190.
Pierce v. Pierce, 46 Ind. 86.
Schouler on the Law of Wills, Sec. 362.
Moffett v. Moffett, 67 Texas 642.

Inasmuch as the bill invoked the jurisdiction of the Circuit Court to annul the alleged will and its probate, on the ground of fraud, alleging facts bringing the case within the decision in Marshall v. Holmes, *supra*, and inasmuch as the bill also invoked the jurisdiction of the court to construe the alleged will and to determine it invalid upon its face because there was no law authorizing the making of a nuncupative will where the estate bequeathed exceeded two hundred dollars, and also invoked the jurisdiction of the court if the will was made and was valid, to construe it and determine that real estate did not pass under it, there was a suit before the court of which it had

undoubted jurisdiction, and in that suit there arose a controversy as to the making of the will. Such being the case, the suit comes directly within the rule announced in Gaines v. Fuentes, *supra*.

Petitioners were compelled to resort to a court of equity in order to obtain the relief which they sought. The claim of the respondent was not that petitioners had a plain and adequate remedy at law, but it was that the Superior Court of the State of Washington for King County had exclusive jurisdiction of the subject matter of the controversy between the parties to the suit in the Circuit Court of the United States. A court of law could not enjoin the respondent Carrau from asserting title to the estate, which was the principal relief sought against her.

In *McConihay v. Wright*, 121 U. S. 202,

a suit was brought in the Circuit Court of the United States in equity to quiet the title of complainant to a tract of land in West Virginia. The West Virginia Code allowed an action of ejectment against one claiming title to or interest in land, although not in possession. It was claimed by the defendant that the West Virginia statute furnished a plain and adequate remedy at law, and therefore that a court of equity had no jurisdiction of the suit to quiet title. This court said, speaking of the existence of the statute:

"Admitting this to be so, it nevertheless cannot have the effect to oust the jurisdiction in equity of the courts of the United States as previously established."

The remedy at law, in order to exclude the exercise of equity jurisdiction, must be not only adequate, but as complete as that which can be afforded by a court of equity.

Rich v. Braxton, 158 U. S. 378.
Gormley v. Clark, 134 U. S. 338.
Allen v. Hanks, 136 U. S. 301, 310.
Tyler v. Savage, 143 U. S. 79, 95.

Kilbourne v. Sunderland, 130 U. S. 505, 514.
Boyce's Executors v. Grundy, 3 Pet. 210, 215.
Walla Walla v. Walla Walla Water Co., 172 U. S. 1, 12.
Hudson v. Randolph, 66 Fed. 217.
Waite v. O'Neil, 72 Fed. 356.
Bardon v. Land Co., 157 U. S. 330.
Smythe v. Ames, 169 U. S. 516.
Sheffield Furnace Co. v. Witherow, 149 U. S. 574, 579.

V.

Does the fact that certain claimants of the estate, whose claims are denied by both parties to the suit, and against whom no relief is asked or can be granted, are not joined as parties, and whose joinder would oust the court of jurisdiction, deprive the court of jurisdiction to determine the controversy between the parties actually before the court, who do possess the requisite diversity of citizenship?

The 47th rule in equity settles this question in the negative.

Fisher v. Shropshire, 147 U. S. 133.

All of the parties were before the court whom the statute of Washington required should be made parties to a suit to contest the will, namely, the petitioners as parties interested in the will, the administrator, and the alleged legatee named in the will, residing in the state. The statute of Washington does not, as does the statute of California, require that all of the heirs should be made parties, even if there were heirs other than these petitioners. In view of the fact, however, that the petitioners claim to be the only heirs of the deceased, and that the respondent Marie Carran claims that the deceased died without leaving any relatives, it would seem an idle form to make parties those who both petitioners and respondents say have no interest in the estate. In Byers v. McAuley, *supra*, this

court found no difficulty in determining the controversy between the parties to the suit who possessed the requisite diversity of citizenship, but reversed the decree as to other parties who did not possess the requisite diversity of citizenship. Under the allegations of the bill and answer, and especially in view of the evidence in the case, the persons other than the petitioners, who claimed to be heirs of the deceased, were neither indispensable nor proper parties. No relief was asked against them. They were not alleged to have any interest in the controversy.

In *Williams v. United States*, 138 U. S. 514,

certain lands in controversy had been certified to the State of Nevada. The state made a contract with appellant for the sale to him, he paying one-fifth of the purchase money at the date of the contract, and contracting to pay the balance in subsequent installments. The United States filed a bill in the Circuit Court for the District of Nevada against appellant alone. The scope of the allegation of the bill was that the lands were improperly certified to the state. The prayer of the bill was for the cancellation of the contract between appellant and the State of Nevada, and an adjudication that appellant had no interest or title in the lands, and that he be directed to surrender to the state for cancellation all contracts and agreements which he had with the state. The court said:

"The first contention of appellant is that this action could not be maintained, because the State of Nevada was not made party, it holding the legal title. * * * * With respect to the first contention, it cannot be doubted that the certification operated to transfer the legal title to the state (Frasher v. O'Connor, 115 U. S. 102), nor that the contract between the state and appellant passed to him the equitable title, the legal title being retained by the state simply as security for the unpaid part of the purchase money. *The proposition, therefore, is that where there are outstanding two interests or titles held by different parties, the real owner cannot proceed against either without joining the other; that only one action can be*

maintained to divest these parties of their separate titles, and that to that action both adverse holders must be parties. The proposition is not sound. A court of equity has jurisdiction to divest either one of the adverse holders of his title in a separate action. Doubtless the court has power, when a separate action is instituted against one, to require that the other party be brought into the suit, if it appears necessary to prevent wrong and injury to either party, and to thus fully determine the title in one action, but such right does not oust the court of jurisdiction of the separate action against either. It has jurisdiction of separate actions against each of the adverse holders, and there is no legal compulsion, as a matter of jurisdictional necessity, to the joinder of both parties as defendants in one action. There are special reasons why this rule should be recognized in this case. It may be that the Circuit Court would not have jurisdiction of an action against the state; that an action against a state on behalf of the United States can be maintainable only in this court, and that, when brought in this court, no other party than the state can be made defendant. We do not decide that these things are so, but suggest the difficulty which must have presented itself to the counsel for the government, and which justifies a separate suit against the holder of the equitable title."

In *Kerr v. Watts*, 6 Wheat. 550 this court said:

"*No one need be made a party complainant in whom there exists no interest, and no one party defendant from whom nothing is demanded. Watts rests his case upon the averment that all the interests once vested in O'Neill and the Scotts now center in himself, and provided he can recover the land now in possession of those actually made defendants, he is contented afterwards to meet the just claims of any others who are not made defendants. No rights will be affected by his recovery but those of the actual defendants and those claiming through them.*"

In the case at bar, these petitioners are entitled to relief against the defendants actually before the court, and are content afterwards to meet the claims of any others who are not made defendants. These petitioners say there are no others who should be made defendants. The respondent Carran says that there are no relatives of the de-

ceased. If the claim of these petitioners is true, there is no need to make the absent claimants parties. If the claim of the respondent Carrau is true, there is no need to make them parties. If persons other than those before the court had any rights in the estate, the decree in this suit would not affect them.

Elmendorf v. Taylor, 10 Wheat. 152.
Vattier v. Hinde, 7 Pet. 252, 263.
Storey v. Livingstone, 13 Pet. 359, 375.
Joy v. Wirts, Fed. Case 7554.
House v. Mullen, 22 Wall. 42.
Ry. Co. v. Stewart, 95 U. S. 284.
Dick v. Baleh, 8 Pet. 36.
Williams v. Gibbs, 17 How. 239.
U. S. v. Heudy, 54 Fed. 447.
Billings v. Aspen Mining Co., 51 Fed. 338.
Harrison v. Crau, Fed. Case 6146.
Union M. Co. v. Dauglery, 81 Fed. 73.
Smith v. Lee, 77 Fed. 779.
Hamilton v. Savannah R. R., 49 Fed. 412.
Society v. Hartland, Fed. Case 13155.

VI.

As stated in the petition for the writ of *certiorari*, in this suit an appeal has been allowed by the United States Circuit Court of Appeals to this court, and is now pending in this court, being docketed as No. 593, October Term, 1903.

The application for the writ of *certiorari* is made because there is doubt whether the decree of the United States Circuit Court of Appeals is final. If this court should hold that it has not jurisdiction of such appeal when the case is reached in the ordinary course of the business of this court, it would then be too late for these petitioners to apply for the writ.

Ayres v. Polsdorfer, 187 U. S. 585.

These petitioners have, therefore, applied for the writ promptly, so that if this court has not jurisdiction to review the decree of the United States Circuit Court of Appeals by way of appeal, such review may be had by the writ of *certiorari*, and they pray that the copy of the record heretofore filed on the appeal be taken and deemed a sufficient return to the writ of *certiorari*.

Security Trust Co. v. Dent, 187 U. S. 237.

The appeal presents the following questions:

1. Has the United States Circuit Court of Appeals jurisdiction of an appeal from a decree of the Circuit Court of the United States for the District of Washington, rendered on the merits in a case where the jurisdiction of the Circuit Court, which was in issue, was invoked both on the ground of diversity of citizenship and also on the ground that certain proceedings in the Superior Court of the State of Washington for King County were taken without jurisdiction, and deprived the petitioners of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States?

It is clear that if diversity of citizenship did not exist, and that the jurisdiction of the Circuit Court rested solely on the ground that the bill stated facts showing that the suit depended on the construction or application of the Constitution of the United States, the Circuit Court of Appeals had no jurisdiction of the appeal, and the sole remedy of the respondent (the appellant in the United States Circuit Court of Appeals) was to appeal to this court.

Union & Planters' Bank v. Memphis, 189 U. S. 71.
American Sugar Ref. Co. v. New Orleans, 181 U. S. 277.

It is equally clear that if the jurisdiction of the Circuit Court could be rested both on diversity of citizenship

and a federal question other than one involving the construction or application of the Constitution of the United States, then the Circuit Court of Appeals would have jurisdiction of an appeal from the Circuit Court, but its decision would not be final.

Northern Pacific R. R. Co. v. Soderberg, 188 U. S. 526.

Howard v. U. S. to the use of David Stewart, 184 U. S. 676.

If, however, a suit is one where jurisdiction of the Circuit Court is invoked because the construction or application of the Constitution of the United States is involved, then it is one which can be brought directly to this court from the Circuit Court, and the whole case is open upon such appeal.

Giles v. Harris, 189 U. S. 475.
Cummings v. Chicago, 188 U. S. 410.

This is so, although jurisdiction also exists because of diversity of citizenship

Davis & Farnum Co. v. Los Angeles, 189 U. S. 207.

The Circuit Court of Appeals for the Ninth Circuit, in *Wright v. McFarlane & Co.*, 122 Fed. 770,

dismissed an appeal for want of jurisdiction, and said, in commenting upon

Penn Mut. Life Ins. Co. v. Austin, 168 U. S. 685:

"It will be observed that in this case the jurisdiction of the Circuit Court was invoked upon the ground of diverse citizenship of the parties to an action, but the bill disclosed a second ground of jurisdiction in the allegations claiming that the ordinances of the city and law of the state were in contravention of the Constitution of the United States. These allegations presented a case in which the jurisdiction of the Circuit Court was not entirely dependent upon the opposite parties to the suit or contro-

versy being citizens of different states, and therefore, under section 5 of the act of March 3, 1891, the Supreme Court had exclusive jurisdiction."

It is suggested that where the jurisdiction of the Circuit Court rests both on diversity of citizenship and also because the bill invoking the jurisdiction of the Circuit Court shows a case involving the construction or application of the Constitution of the United States, and the jurisdiction of the Circuit Court is in issue, the whole case must be brought to this court from the Circuit Court and the jurisdiction of this court is exclusive.

Howard v. U. S., 184 U. S. 676.
St. Louis Cotton Compress Co. v. American Cotton Co. (C. C. A. 8th Circuit), 125 Fed. 196.
Wrightman v. Boone County, 31 C. C. A. 570.
Chicago, M. & St. P. Co. v. Evans, 7 C. C. A. 290.
Hugnley Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290.
Robinson v. Caldwell, 165 U. S. 359.
Loeb v. Columbia Township, 179 U. S. 472.
Ayres v. Polsdorfer, 187 U. S. 585.
Colo. Cent. Consolidated Min. Co. v. Turk, 150 U. S. 138.
Davis & F. Mfg. Co. v. Los Angeles, 189 U. S. 207.

2. Does the bill of complaint state facts showing that the jurisdiction of the Circuit Court was founded upon a controversy involving the construction or application of the Constitution of the United States?

The bill alleges that the Superior Court, without notice to any one, entered a decree probating the alleged nuncupative will. The bill alleges that the Superior Court did not acquire jurisdiction to hear any evidence or to take any action in regard to the probate of the will. The law of Washington upon the subject of the probate of a nuncupative will required that the next of kin should be summoned so that they could contest the will.

When the bill was filed more than six months had elapsed since the alleged speaking of the alleged testamentary words. If not already probated the will never could be probated. The mandate of the statute prohibited it.

"*No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words*, nor unless the words or the substance thereof be first committed to writing and a citation *issued to the widow or next of kin of the deceased, that they may contest the will if they think proper.*"

> Pierce's Washington Code, Sec. 2352. Ballinger's Code, Sec. 4606 (Laws of 1854, page 316, Section 25).

"In all cases in which citations are issued from the Superior Court in probate proceedings, *they shall be served at least ten days before the term at which they are made returnable*, except when issued from the court in cases where the law requires the judge to issue them upon his own motion and he does so issue them, *and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court.*"

> Pierce's Code of Washington, Sec. 2331. Ballinger's Code, Sec. 6083.

Section 1303 of the Code of 1881 of the Territory of Washington provided:

"All process issuing out of the Probate Court shall be attested by the clerk and sealed with the seal of the court, and shall be served in the same manner as process issuing out of the District Court."

This section is still the law and is contained in Pierce's Washington Code, Sec. 2321.

The Superior Court of the State of Washington succeeded the Probate Court of the Territory. When personal service cannot be had in the Superior Court, service is made by publication.

It is claimed by the respondent Marie Carran that the

alleged will vested in her the entire real estate and personal property of the deceased. She could not, under the law of Washington of 1895, *supra*, assert any title to the real estate as a devisee until the will should be probated. She alleges in her answer that the Superior Court of the State of Washington for King County

"made and caused to be entered a decree in said court probating said will, and that said decree established the making, publishing and validity of such nuncupative will, and that said decree has been ever since and is now in full force and effect."

The Superior Court of the State of Washington for King County, in violation of the statute prohibiting it from hearing any proof of the alleged nuncupative will until the widow or next of kin had been cited, that they might contest the will, entered its decree of probate. On the strength of that decree, the respondent Marie Carrau has asserted that she is the sole legatee and devisee of the deceased, and she claims that the decree is conclusive against these petitioners, and that they have no standing as heirs at law or next of kin to ask the court to distribute the property to them, because she claims the deceased died testate and that his will has been duly probated (R. pp. 971, 977, 979).

The alleged decree of probate was not only made by the Superior Court without jurisdiction, but it was based upon the false testimony of witnesses, given *ex parte*. It was based upon a citation ordered by the court to be made returnable at an impossible date, and the citation conformed to the order for its issuance. The decree of probate is fair upon its face, but is false in fact.

Whenever the law requires notice to be given to a party, it means such a notice as will enable him to appear in time to defend himself against the claims of the other party.

In *Ball et al. vs. Clothier et al.*, decided by the Su-

preme Court of Washington March 12, 1904 (34 Wash. ——, not yet published),

The Supreme Court of Washington had before it the question whether the Probate Court, after the adoption of the State Constitution and prior to its jurisdiction being merged in the Superior Court, acquired jurisdiction to order a sale of real estate, without notice being given to minor heirs and without the appointment of a guardian for them. The notice was by publication, but the publication was not for a sufficient length of time.

The Court said:

"The petition for the sale of the land substantially complied with the statute, but there was no service or attempt at service of the petition or notice of the hearing upon the minor heirs, except an insufficient publication directed to all interested parties. No guardian *ad litem* was appointed for them. They had no general guardian. No appearance was made by any person for them upon the hearing as to the necessity for the sale. The court nevertheless directed the sale of the land. The sale was made on the date provided in the notice. A return thereof was subsequently made, and without an opportunity for objection, was confirmed, and a deed issued. The purchase price was paid and the estate had the benefit thereof. Appellants contend that the statute relating to notice and sale was merely directory; that the proceedings are *in rem*, and since the court had jurisdiction *in rem*, the sale was valid, notwithstanding irregularities. Conceding that the Probate Court had jurisdiction of the real estate for the purpose of administration upon the appointment of executors or administrators, as was said in Ackerson vs. Orchard, 7 Wash. 377, still before the heirs, who were the beneficiaries under the will, could be divested of their title, the substantial requirements of the statute must be complied with. The statute in force at the time the order was made provided that, when a petition for the sale of real estate was filed, the court should make an order directing all interested persons to appear, at a time and place specified, to show cause why the order should not be granted, and that this order should be personally served upon all persons

interested in the estate at least ten days before the hearing, or published four successive weeks in a newspaper. * * * If the court had jurisdiction over the estate, *it was also necessary that it acquire jurisdiction over the persons of the minor heirs before proceeding to divest them of their title, because the statute expressly required the minor heirs to be represented.* * * * When the statute required the appearance of the minor heirs by guardian *ad litem*, before the court should make the order of sale, it was necessary for such appearance, even if the proceedings were *in rem*. *The order of sale was therefore without the authority of law and was void as to the minor heirs.*"

In the case *in re Leonard's Will*, 47 Atl. 222, 65 N. J. L. 167,

citations were issued returnable at a time which had already passed. The court said:

"The citations issued by the Surrogate were as if no return day had been inserted therein, for the day named was an impossible date."

In *Randolph v. Bague*, 44 Cal. 370,

the court said:

"Although proceedings for the proof of wills are usually treated as proceedings *in rem*, yet if the statute requires that certain persons shall be notified, such provisions must be complied with in order to give the court jurisdiction."

In *Charlebois v. Bourdon Admr.*, 6 Mont. 373,

the court said:

"The statute in relation to the probate of wills provides that, when the petition is filed and the will produced, the probate judge must fix a day for hearing the petition. Notice of the hearing shall be given by the clerk of the court by publishing the same in a newspaper of the county. * * * * The statute also provides that at the time appointed for the hearing, the court must require proof that the notice of the hearing has been given, which being made, the court must hear the testimony in proof of the will. * * * The court is authorized to

hear the testimony in proof of the will, after proof of notice of the hearing has been given. But there is no authority to hear the testimony before proof of notice. Notice as provided by the law gives jurisdiction. The probate court is of limited jurisdiction. It has its life and being in the statutes. It possesses such authority as is conferred. Jurisdiction comes to it by observing the law. The hearing for the admission of a will to probate is in the nature of an action, and the order thereon is in the nature of a judgment. The heirs at law have the right to be heard. They have the right to be present at the hearing; and if they are not notified thereof and an order is made without giving them an opportunity to be heard or to contest the admission of the will to probate, they would stand in very much the same position as if a judgment had been rendered against them without bringing them into court and giving them an opportunity to answer or defend."

To the same effect are the following cases:

Dupevier v. Berard, 31 So. 653; 107 La. 91.
Perez v. Perez, 59 Tex. 322.
Ashhurst v. Fountain, 67 Cal. 18.
Spencer v. Houghton, 68 Cal. 82.

In *Winsor v. McVeigh*, 93 U. S. 274, 277,
this court said:

"A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, *and is not entitled to respect in any other tribunal.* That there must be notice to the party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. *Until notice is given the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be by the law of its organization, over the subject matter.*"

In *Roller v. Holley*, 176 U. S. 398,
the question before this court was whether a judgment of a court of Texas in a proceeding *in rem* affecting the property of a defendant served with process in Virginia, re-

quiring him to appear and defend the action in Texas within five days, had been rendered without due process of law. This court said:

"In short, for aught that appears here, parties may be called from the uttermost parts of the earth to come to Texas and defend suits against them within five days from the day the notice is served upon them. * * * *That a man is entitled to some notice before he can be deprived of his liberty or property, is an axiom of the law to which no citation of authority would give additional weight*, but upon the question of the length of such notice there is a singular dearth of judicial decision. It is manifest that the requirement of notice would be of no value whatever unless such notice were reasonable and adequate for the purpose. * * * Without undertaking to determine what is a reasonable notice to non-residents, we are of opinion, under the circumstances of this case, and considering the distance between the place of service and the place of return, *that five days was not* a reasonable notice *or due process of law, and that the judgment obtained upon such notice was not binding upon the defendant.*"

It is respectfully submitted that if five days is not due process of law because not a reasonable time within which to require a defendant in an action *in rem*, who is served with process in the state of Virginia, to appear in the courts of Texas and defend his rights, there is no possible theory upon which a decree, probating an oral will disinheriting these petitioners and declaring the claimant under the alleged nuncupative will to be the legatee and devisee of the entire estate, can be sustained, when the statute required notice, and the decree was founded on a citation requiring these petitioners, then in Ireland, to appear on the day of its issuance at an hour already past to defend their rights in the courts of the State of Washington, six thousand miles distant. The Circuit Court well designated the citation "a mockery." To recognize the decrees based upon it as capable of conferring rights would be to convert the requirement of notice provided in the statute into "a delusion, a mockery and a snare."

The decree of probate was, therefore, rendered without jurisdiction, without due process of law, and to give it effect, or to recognize it in any manner as the basis of any claim on the part of the respondent Marie Carrau, is to deprive these petitioners of their property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States. The bill so alleged. This allegation the respondent Marie Carrau denied.

The opinion of the Circuit Court not only held that these petitioners were the heirs at law and next of kin of the deceased, and as such entitled to challenge the alleged nuncupative will, because it never was executed, but that the decree of probate, based upon a citation requiring these petitioners to appear at a time which was already past at the time of its issuance, was a nullity and that no effect could be given to it as against the petitioners (R. pp. 241, 242).

The Circuit Court, therefore, rested its decision in part upon the proposition that to give effect to the decree of probate would be to deprive these petitioners of their property without due process of law.

Inasmuch, therefore, as the bill alleged the foregoing facts, it showed that the jurisdiction of the Circuit Court could be rested upon a ground entirely separate and apart from diversity of citizenship.

3. If the bill does not state such a controversy, is there a right of appeal to this court from the decree of the United States Circuit Court of Appeals deciding the question of jurisdiction only and reversing a decree rendered by the Circuit Court on the merits in favor of the party who invoked the jurisdiction of that court when the jurisdiction of the Circuit Court was in issue?

It is perfectly clear that, had the Circuit Court of the United States for the District of Washington dismissed

the bill of petitioners for want of jurisdiction, petitioners could have had the question of jurisdiction certified to this court and here determined. Does the fact that the Circuit Court sustained the jurisdiction, invoked by these petitioners, and decided the case upon the merits in their favor cut off the right of these petitioners to have the question of jurisdiction determined by this court, because the Circuit Court of Appeals, on the appeal of the respondent here, has determined it against them and has refused to hear the case upon the merits? The decisions of this court hold that, where the jurisdiction of the Circuit Court is in issue, and the jurisdiction is sustained and a decree rendered upon the merits, the defeated party has the right to take an appeal, on the question of jurisdiction alone, to this court, and to have the jurisdictional question certified to this court, or he has the right to appeal the whole case to the Circuit Court of Appeals, and that, if the decision of the Circuit Court of Appeals is against him, he has no appeal to this court. If, however, the Circuit Court of Appeals refuses to decide the case upon the merits and decides against the jurisdiction of the Circuit Court, does the successful party in the Circuit Court lose his right to have the jurisdictional question determined by this court?

The Circuit Court of Appeals refused to certify the question of jurisdiction to this court. If, instead of allowing an appeal to this court, the Circuit Court of Appeals had remanded the cause to the Circuit Court, with instructions to dismiss the bill for want of jurisdiction, and the Circuit Court had entered a decree dismissing the bill for want of jurisdiction, could these petitioners have appealed therefrom and have had the jurisdictional question then certified to this court? If they could not, then the law is in this peculiar condition: By reason of the election of the defeated party to take a case involving the jurisdiction of the Circuit Court to the United States Circuit Court of Appeals upon the whole case, the successful party, who has

had no election, is deprived of his right to have this court pass upon the question of jurisdiction.

In the case of *Pullman Palace Car Co. v. Central Transportation Co.*, 171 U. S. 138,

this court, in view of the doubt as to which court an appeal should have been taken to, issued the writ of *certiorari*.

We submit that, unless it is perfectly clear in this case that the decision of the United States Circuit Court of Appeals is not final, then the writ of *certiorari* should be issued to review its decree, the decree of the Circuit Court of Appeals should be reversed and that the whole case being brought to this court, the decree of the Circuit Court of the United States for the District of Washington should be affirmed.

Respectfully submitted,

JAMES B. HOWE,
Counsel for Petitioners.

SAMUEL H. PILES,
GEORGE DONWORTH,
CHARLES H. FARRELL,
Of Counsel.

Supreme Court of the United States

October Term, 1894.

HANNAH O'CALLAGHAN and MICHAEL CORCORAN, Appellants,

v.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, Appellees.

APPEAL FROM THE CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

Brief of Counsel for Appellants, in Opposition to the Motion to Dismiss the Appeal.

JAMES K. HOWE,
Counsel for Appellants.

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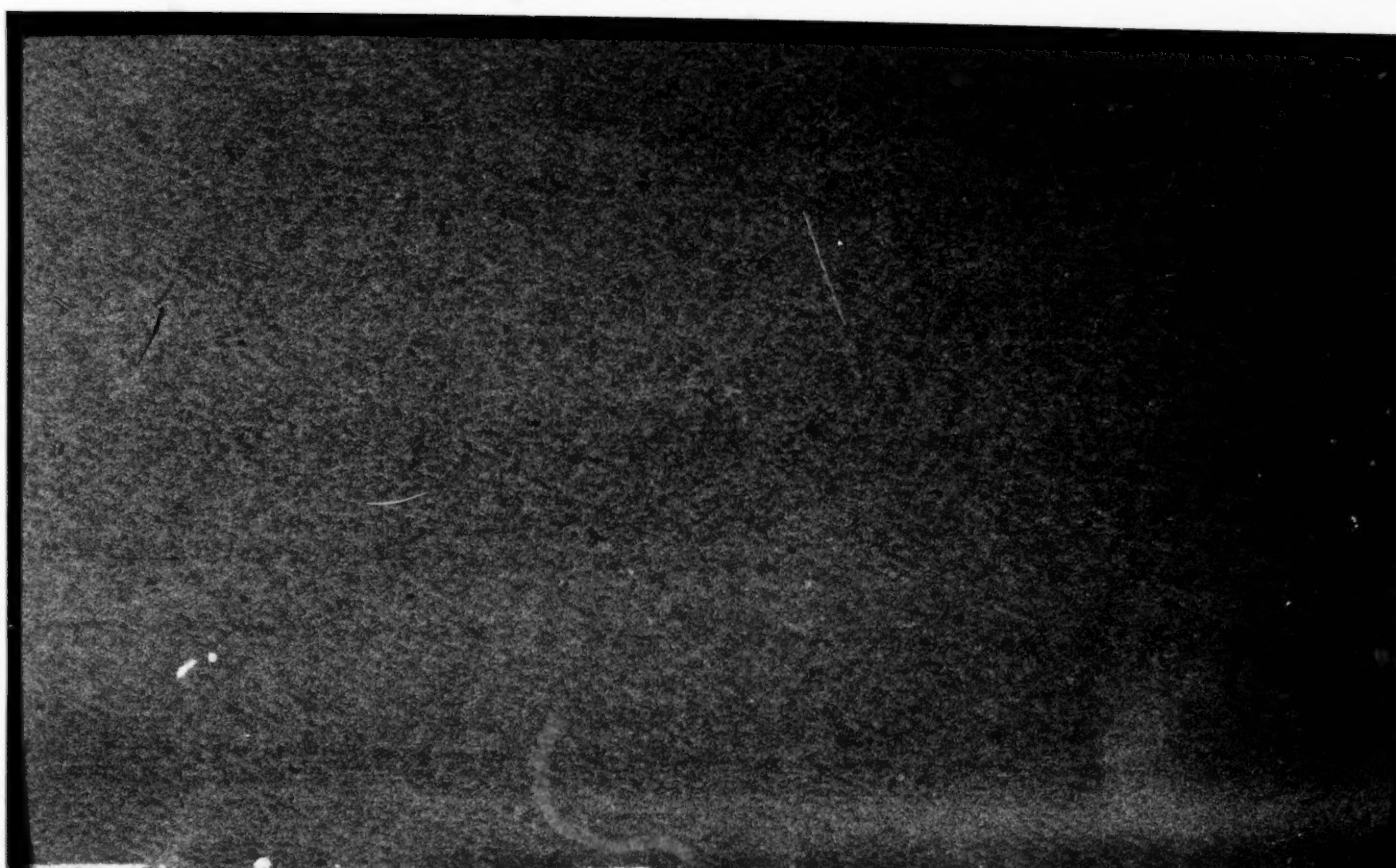

IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Appellants*,

v.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Appellees*,

No. 593

APPEAL FROM THE CIRCUIT COURT OF APPEALS, NINTH CIRCUIT.

BRIEF OF COUNSEL FOR APPELLANTS, IN OPPOSITION TO THE MOTION TO DISMISS THE APPEAL.

I.

The appellee Marie Carrau alone has moved to dismiss the appeal in this case. The grounds of the motion are thus stated by her counsel at page 10 of their brief:

"First: Because the decision of the Circuit Court of Appeals is final, under section 6 of the Judiciary Act of March 3, 1891; and

Second: Because it is clear from the record that neither the Circuit Court, the Circuit Court of Appeals, nor this court has any jurisdiction of the case."

We agree with counsel that the Circuit Court of Appeals had no jurisdiction of the case. We deny that this court is without jurisdiction, and we deny that the Circuit Court was without jurisdiction.

The first question to be considered, then, is whether this court is without jurisdiction for the reason that the decree of the Circuit Court of Appeals was final. If the decree of the Circuit Court of Appeals was not final, this court has jurisdiction, because an appeal then exists as a matter of right.

"But to impress the attribute of finality upon a judgment of the Circuit Court of Appeals, it must appear that the original jurisdiction of the Circuit Court was *dependent 'entirely'* upon *diverse citizenship.*" (Italics ours).

Northern Pacific v. Soderberg, 188 U. S. 526.
Ayres v. Polsdorfer, 187 U. S. 585.
Howard v. U. S. to the use of Stewart, 184 U. S. 676.
Hugulcy Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290.
Loeb v. Columbia Township, 179 U. S. 472.
Robinson v. Caldwell, 165 U. S. 359.
Colo. Cent. Co. v. Turck, 150 U. S. 138.

The bill invoked the jurisdiction of the Circuit Court upon two grounds:

First: Because complainants were aliens, subjects of the King of Great Britain and Ireland, and defendants were citizens of the United States and of the State of Washington, and the amount involved was sufficient.

Second: Because the case involved the construct-

ion and application of the Fourteenth Amendment to the Constitution of the United States, to prevent complainants from being deprived of their property without due process of law, under authority of the State of Washington, by a judgment of the state court and proceedings thereon, all rendered and taken without jurisdiction and without notice to complainants.

The original jurisdiction of the Circuit Court was specifically invoked on both of these grounds (R., pp. 16, 17). The appellee Carrau filed a motion in the Circuit Court to dismiss the bill for want of jurisdiction, in which she alleged that the matters pleaded in the bill were "not cognizable in the Federal Court." (R. p. 29).

The Circuit Court took jurisdiction of the case, required her to answer, and she filed an answer in which she again challenged the jurisdiction of the Circuit Court, and specifically denied that the vesting of the title and possession of the property of complainants in her would be depriving complainants of their property without due process of law, and denied that the same would be in violation of their rights under the Fourteenth Amendment to the Constitution of the United States (R. p. 73).

The Circuit Court rendered a decree upon the merits in favor of complainants.

The opinion of the Circuit Judge, which it is permissible to refer to,

(Loeb v. Trustees, 179 U. S. 472).

shows that the Circuit Judge treated both grounds of jurisdiction as well founded (R. pp. 240, 241, 242).

The appellee Carrau alone appealed from the decree to the United States Circuit Court of Appeals. She attempted to assign numerous errors on the part of the

Circuit Court, but an inspection of her assignments of error will show that the only matter properly assigned was that the Circuit Court had no jurisdiction of the subject matter of the suit (R. pp. 254, 257). The Circuit Court of Appeals refused to decide the case upon the merits, and rendered a decree reversing the decree of the Circuit Court with directions to dismiss the bill (R. p. 1452).

In the opinion of the Circuit Court of Appeals, that court said:

"We are of the opinion that the court below was without jurisdiction of the subject matter of the suit, and further that all necessary parties were not before the court, some of whom, if made parties, would have ousted the court of jurisdiction. On both of these grounds we think that the court below should have dismissed the bill at the complainant's cost (R. p. 1441). * * * Without reference to the merits of the suit, concerning which we cannot properly indicate any views, it results that the judgment must be and hereby is, reversed, and the cause remanded to the court below with directions to dismiss the bill at complainant's costs." (R. 1452).

The first question then, which is presented to this court, is whether the decree of the Circuit Court of Appeals was final because the jurisdiction of the Circuit Court was *dependent entirely on diverse citizenship*, and that therefore this court is without jurisdiction.

As before stated, the Circuit Court of Appeals held that jurisdiction in the Circuit Court could not exist by reason of diverse citizenship. Does the word "dependent" in that clause of the Act of March 3, 1891, making the decree of the Circuit Courts of Appeals final in all cases where the jurisdiction is dependent entirely on diversity of citizenship, mean jurisdiction in the Circuit Court

must exist entirely by reason of diverse citizenship, or does it mean that the jurisdiction of the Circuit Court must be *invoked entirely* upon the ground of diverse citizenship? If the meaning of the statute is that jurisdiction must *exist* in the Circuit Court entirely by reason of diverse citizenship, then the decree of the Circuit Court of Appeals could not be final in a case where the decree of the Circuit Court of Appeals holds that such jurisdiction did not exist.

If, upon the other hand, the true construction of the provision of the Act of March 3, 1891, making the decree of the Circuit Courts of Appeals final in all cases where the jurisdiction of the Circuit Court is dependent entirely upon diverse citizenship, is that the word "dependent" means "invoked", then it is equally clear that the decree of the Circuit Court of Appeals in this case was not final, because the bill shows that the jurisdiction of the Circuit Court was invoked not only on the ground of diverse citizenship, but also upon the ground, specifically alleged in the bill, that the complainants were under State authority about to be deprived of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

The interpretation which has been placed by this court upon the word "dependent" in the act, has not been uniform. It has in some cases been interpreted as meaning that the jurisdiction of the Circuit Court must have *attached;* in others that it must have been *invoked.* It is apparent that entirely different results might follow by giving these different meanings to the same word. If the word "dependent" means "attached", in the sense that jurisdiction in the Circuit Court must *exist entirely* by reason of diversity of citizenship, as distinguished from

the jurisdiction being *invoked* upon that ground but not existing, then there is no difficulty in harmonizing the various provisions of the act. If, however, the word "dependent" is to be interpreted as synonymous with "invoked", then the decree of the Circuit Court of Appeals cannot be held final, where the bill invokes the jurisdiction of the Circuit Court both upon diversity of citizenship and also upon other grounds, although such other grounds might not be sufficient for the jurisdiction of the Circuit Court to attach on those alone, if diversity of citizenship were not pleaded.

It cannot, we submit, be the law, that in determining the question of the finality of a decree of the Circuit Court of Appeals, the word "dependent" means "invoked" upon the ground of diversity of citizenship only, and therefore, whether rightfully or wrongfully invoked on that ground, the decree of the Court of Appeals is final, while the same word, in determining whether the jurisdiction of the Circuit Court of Appeals is dependent on that ground and also some other ground, means that such other ground of jurisdiction of the Circuit Court must in fact exist in order to prevent the decree of the Circuit Court of Appeals from being final.

In the case of

Florida Central & Peninsular R. R. Co., v. Bell,
176 U. S., 321,

the plaintiffs brought a joint action in ejectment against the railroad company, a Florida corporation. The citizenship of certain of the plaintiffs was disclosed by the complaint. The citizenship of other plaintiffs was not shown. The Circuit Court took jurisdiction of the case on the theory that it was one arising under the laws of the United States. Judgment was rendered in favor

of the plaintiffs. A writ of error was taken to the Circuit Court of Appeals, and the judgment of the Circuit Court was affirmed. A writ of error was then prosecuted to this court to review the judgment of the Circuit Court of Appeals.

Mr. Justice Shiras, in delivering the opinion of this court, said:

"Our first inquiry is whether this court has jurisdiction to review the judgment of the Circuit Court of Appeals. The writ of error in this case was brought under section 6 of the Judiciary Act of March 3, 1891. If the judgment of the Circuit Court of Appeals was final under that section, this writ of error must be dismissed. In order to maintain our jurisdiction it must appear that the jurisdiction of the Circuit Court was not dependent solely upon the opposite parties being citizens of different states. Colorado Cent. Consol. Min. Co. v. Turck, 150 U. S. 138, 14 Sup. Ct. Rep. 35; Press Pub. Co. v. Monroe, 164 U. S. 105.

This question must be answered upon an inspection of the declaration of the plaintiffs in the Circuit Court. Does it disclose that plaintiffs *invoked* the jurisdiction of that court because the parties were citizens of different states, or because the case was alleged to be one arising under the constitution, laws or treaties of the United States? The action was in ejectment, to recover possession of a tract of land in Hillsboro County, State of Florida. The plaintiffs were eight in number, three of whom were alleged to be citizens of the State of Texas, and there was no allegation as to the citizenship of the other five. The defendant, the Florida Central and Peninsular R. R. Co., was alleged to be a corporation organized and existing under the laws of Florida, hence upon the face of the declaration the jurisdiction of the Circuit Court would have failed, at least as to five of the plaintiffs, if that jurisdiction depended solely on the citizenship of the parties. The declaration, however, alleges

that the plaintiffs claim title to the land in dispute by virtue of a patent granted to their ancestor by the government of the United States; that the defendant claimed title under the first section of an Act of Congress entitled 'An Act granting public lands in alternate sections to the states of Florida and Alabama, to aid in the construction of certain railroads in said states,' approved May 17, 1856; and further, that the defendant railroad company claimed and insisted that it was entitled to locate and maintain the route of its road through the land in question under said act of Congress.

Accordingly, it appears that the *theory* of the plaintiffs in bringing their suit in the Circuit Court of the United States was that the controversy was between a patentee of the United States and a railroad company claiming a right to occupy the land embraced in the patent by virtue of an act of Congress, and was therefore a case arising under the laws of the United States. This was the view of the judge who tried the case in the Circuit Court, as he refused to grant defendant's motion to dismiss for want of jurisdiction, and this view was also taken by the Circuit Court of Appeals, as appears in the following passage of its opinion:

'There is no effort in this case to found the jurisdiction of the Circuit Court on the diverse citizenship of the parties. There is nothing in the record to indicate that the judge of the Circuit Court entertained jurisdiction of the case on that ground * * *'.

As, then, the plaintiffs in the Circuit Court *claimed* in their declaration that the controversy was one that turned on a construction of the laws of the United States, and as both the courts below dealt with the case on that assumption, it is plain that it cannot be successfully contended in this court that the judgment of the Circuit Court of Appeals was final, because the jurisdiction of the Circuit Court was dependent entirely upon the opposite parties being citizens of different states. * * *

We come to the case, then, as one in which we have a right to supervise the judgment of the Circuit Court of

Appeals, and the first question, and indeed, as we read the record, the only one we have to meet, is whether the Circuit Court had jurisdiction of the case. Not having, as we have seen, jurisdiction, because of a controversy between citizens of different states, did it have jurisdiction because the case was one arising under the Constitution or laws of the United States? This question was answered affirmatively in both courts below, and this because, as it seemed to them, the plaintiff's declaration disclosed such a case. * * *

(p. 332). Apart from the question of jurisdiction arising from the presence of any Federal question, can it be said that jurisdiction did *attach* in respect to those plaintiffs who were alleged to be citizens of Texas? * * *

(p. 335). As, then, in the present case, the plaintiffs elected to assert a joint claim and title to the land in dispute, and recovered a joint judgment for their undivided interest therein, and as the plaintiff's declaration discloses no Federal question, the principles of the cited cases apply, and compel a dismissal of the suit for want of jurisdiction in the Circuit Court. * * *

The judgment of the Circuit Court of appeals is reversed. The judgment of the Circuit Court is likewise reversed and the cause is remanded to that court with directions to dismiss the action for want of jurisdiction."

If in the case cited, the Circuit Court of Appeals had erroneously held that jurisdiction did exist in the Circuit Court by reason of diversity of citizenship, as well as by reason of the existence of a Federal question, its decree would not have been final, because it also erroneously determined in favor of the plaintiff the existence of the Federal question. This case, therefore, clearly shows that the construction to be given to that clause of the act making the decrees of the Circuit Courts of Appeals final, is to be determined, not by ascertaining whether juris-

diction in the Circuit Court exists, but whether it is claimed in good faith and not fictitiously in the pleading which invokes the jurisdiction of the Circuit Court. It is also plain from this decision that in determining the finality of the decree of the Circuit Court of Appeals the question is not, upon what ground can the decree of the Circuit Court be sustained, because in the case just cited, it could not be sustained at all; but the question is, upon what ground was the jurisdiction invoked by the party seeking it?

If the decree of the Circuit Court of Appeals is to be held final in cases where the jurisdiction of the Circuit Court cannot attach by reason of any Federal question, although invoked on that ground, then the decision just cited would not have been rendered. Neither in the case at bar, can the decree of the Circuit Court of Appeals be held final, because the jurisdiction of the Circuit Court is dependent entirely on diverse citizenship, when the jurisdiction of the Circuit Court was invoked on other grounds than diverse citizenship, and the Circuit Court of Appeals denied the jurisdiction of the Circuit Court on the ground of diverse citizenship.

"When the question is whether a judgment of the Circuit Court of Appeals is final in a particular case, it may well be that the jurisdiction of the Circuit Court is, within the meaning of that section, to be regarded as dependent entirely upon the diverse citizenship of the parties if the plaintiff *invoked* the authority of that court *only upon that ground.*"

Loeb v. Trustees, 179 U. S. 472, 479.

"Section 6 provides that the Circuit Courts of Appeals shall exercise appellate jurisdiction to review the final decisions of the District and Circuit Courts 'in all cases

other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states.' The jurisdiction referred to is the jurisdiction of the circuit court, and as the judgment of the court of appeals is made final in all cases in which the jurisdiction of the circuit court *attaches* solely by reason of diverse citizenship, it follows that the court of appeals has power to review the judgment of the circuit court in every such case, notwithstanding constitutional questions may have arisen *after the jurisdiction of the circuit court attached*, by reason whereof the case became embraced by section 5."

American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, 280.

From these cases it would seem necessarily to follow that the decree of the Circuit Court of Appeals holding that the jurisdiction of the Circuit Court had not attached, was not final. If, in order to render the decree of the Circuit Court of Appeals final, the word "dependent" is to be interpreted as "attached," the decree in the case at bar was not final, because the court held that the jurisdiction never attached. If the word "dependent" is to be interpreted as synonymous with "invoked," the decree of the Circuit Court of Appeals was not final, because the jurisdiction of the Circuit Court was invoked not entirely upon the ground of citizenship, but upon that ground and also upon the ground that the case was one involving the construction and application of the Constitution of the United States.

"The Act of March 3, 1891, chap. 517 (26 Stat. at L. 826), provides in section 6 that the circuit courts of ap-

peals shall have appellate jurisdiction to review judgments and decrees of the circuit courts in all cases in which a direct appeal is not allowed by section 5 to this court, and that the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely on diversity of citizenship.

The *jurisdiction* referred to is the *jurisdiction* of the circuit court as originally *invoked*. * * *

If, *after* the jurisdiction of the circuit court *attaches* on the ground of diversity of citizenship, issues are raised, the decision of which brings the case within either of the classes set forth in section 5, then the case may be brought directly to this court, although it may be carried to the circuit court of appeals, in which event the final judgment of that court could not be brought here as of right. * * *

The ground on which the jurisdiction of the circuit court was *invoked was solely diversity of citizenship*, and the record does not show anything to the contrary, so that the decree of the circuit court of appeals cannot be regarded otherwise than as made final by the statute."

Huguley Mfg. Co. v. Galeton Cotton Mills, 184 U. S., 290, 294.

"The plaintiff, in her *complaint, did not claim any right under the Constitution and laws of the United States*, or in any way mention or refer to that Constitution or to those laws; and at the trial she relied wholly upon a right given by the common law, and maintained her action upon such a right only. It was the defendant, and not the plaintiff, who *invoked the* Constitution and laws of the United States."

Press Pub. Co. v. Monroe, 164 U. S. 105, 112.

The appeal from the Circuit Court of Appeals was therefore dismissed.

In

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397,

this court had presented the question whether the judgment of the Circuit Court of Appeals was final. The suit arose under the revenue laws. This court held that it also arose under the Constitution of the United States. The Government contended that, as the decisions of the Circuit Court of Appeals were made final in cases arising under the revenue laws, this court had no jurisdiction to review the decree of the Circuit Court of Appeals. This court said:

"The meaning of the words 'arising * * * under the revenue laws' in the 6th section, is satisfied if they are held as embracing a case strictly arising under laws providing for internal revenues, and which does not by reason of any question in it, belong also to the class mentioned in the 5th section of that act. We do not think that the words quoted necessarily embrace a case carried to the Circuit Court of Appeals, which, although arising under the revenue laws and involving a construction of those laws, depends for a full determination of the rights of the parties upon the construction or application of the Constitution or upon the constitutionality of an act of Congress. We lean to that interpretation of the act which enables the defeated party in such a case in the Circuit Court of Appeals to have, as of right, upon writ of error to that court, a re-examination here of the judgment (the requisite amount being involved), if the correctness of the judgment depends in whole or in part upon the application or construction of the Constitution or upon the constitutionality of any act of Congress drawn in question."

We submit, therefore, that in this case, inasmuch as the bill of appellant *invoked* the jurisdiction of the Circuit Court not only upon the ground of diversity of citizenship, but also upon the ground that the case involved the

construction and application of the Constitution of the United States, the decree of the Circuit Court of Appeals, *if it had jurisdiction at all*, was not final.

It was not, we submit, the intention of Congress, by the language used in the act making the decrees of the Circuit Courts of Appeals final in cases where the jurisdiction was dependent entirely upon diversity of citizenship, to enact a law producing the following result:

That the decrees of the Circuit Courts of Appeals are final where the *jurisdiction* of the Circuit Court is dependent entirely upon diverse citizenship, and also in all cases where jurisdiction by reason of diversity of citizenship exists, but where the Circuit Court of Appeals, notwithstanding the existence of diversity of citizenship, erroneously decides that the Circuit Court is without jurisdiction.

II.

The next question to be considered is, whether the bill did invoke the jurisdiction of the Circuit Court upon the ground that the suit involved the construction or application of the Constitution of the United States.

The allegations of the bill and the law of the State of Washington, of which the Circuit Court was called upon to take judicial notice, show substantially the following facts:

Appellants are the heirs at law and next of kin of one John Sullivan, deceased, who died on the 26th day of September, 1900, in King County, Washington, leaving there a large estate, consisting of real and personal property. A special administrator of the estate of the deceased was appointed. Certain persons petitioned that general letters of administration on the estate should

issue, and among them was the appellee, Marie Carrau, who filed a petition setting forth that the deceased had died intestate. The several petitions were brought on for hearing in the Superior Court of the State, and on the 19th of November, 1900, a general administrator of the estate was appointed, who took possession of the real and personal property. The law of the State of Washington provides (Laws of 1895, p. 197, Sec. 1):

"When a person dies seized of lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein in fee or for the life of another, *his title shall vest immediately in his heirs or devisees*, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or any other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent; *provided, that no person shall be deemed a devisee until the will has been probated.* The title and right to possession of such lands, tenements or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the executor or administrator when appointed, and persons lawfully claiming under such executor, or administrator; *and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements or hereditaments, and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the executor or administrator, and those lawfully claiming under such executor or administrator.*"

This section has been construed by the Supreme Court

of the State, which decided that the title passes immediately upon the death of a decedent to his heirs.

Griffin v. Warburton, 23 Wash. 231.
Anrud v. Scandinavian Bank, 27 Wash. 16.

On the 8th day of March, 1901, the appellee, Marie Carran, filed her petition in the Superior Court of the State, for King County, in which she alleged that the deceased, John Sullivan, the night before his death had made a nuncupative will, whereby he bequeathed and devised to her his entire estate, and she prayed that the will be probated.

The law of Washington does not create the right to make a nuncupative will. It simply imposes additional restrictions upon the common law right. Sec. 23, Laws 1854, p. 315.

Pierce's Washington Code, Sec. 2352; Ballinger's Code, 4606; Laws of 1854, p. 316, Sec. 25, provides:

"No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper."

Pierce's Code of Washington, Sec. 2331, Ballinger's Code, Sec. 6083, provides:

"In all cases in which citations are issued from the Superior Court in probate proceedings, they shall be served at least ten days before the term at which they are made returnable, except when issued from the court in cases where the law requires the judge to issue them upon his own motion, and he does so issue them; and in such

cases they shall be served in sufficient time to allow the person served to be in attendance on the court."

Code 1881, Sec. 1303, Pierce's Code, Sec. 2321, provides:

"All process issuing out of the probate court shall be attested by the Clerk and sealed with the seal of the court, and shall be served in the same manner as process issuing out of the (Superior) District Court."

The Superior Court of the State of Washington became the successor of the probate courts of the Territory.

Constitution of Washington, Art. 27, Sec. 10, provides:

"When the State is admitted into the Union, and the Superior Courts in the respective Counties organized, the books, records, papers and proceedings of the probate court in each county, and all causes and matters of administration pending therein, shall upon the expiration of the term of office of the probate judges, on the second Monday in January, 1891, pass into the jurisdiction and possession of the Superior Court of the same county, created by this Constitution, and said court shall proceed to final judgment or decree, order, or other determination, in the several matters and causes, as the territorial probate court might have done if this Constitution had not been adopted; and until the expiration of the term of office of the probate judges, such probate judges shall perform the duties now imposed upon them by the laws of the Territory. The Superior Courts shall have appellate and revisory jurisdiction over the decisions of the probate courts, as now provided by law, until such latter courts expire by limitation."

The bill alleged (pp. 14, 15, 16, 17, 19), that immediately upon the petition being filed, a citation was issued by the Superior Court and placed in the hands of the Sheriff of the County for service upon the widow and

next of kin of the deceased; that the Sheriff immediately returned the citation, stating that he was unable to find any such persons in King County, and the State court immediately assumed to admit the pretended nuncupative will to probate, and that the same now stands as though legally probated, on the records of the court; that the Superior Court acted wholly without jurisdiction in assuming to probate the will; that it had no jurisdiction to hear any evidence or to take any steps for the probate of a nuncupative will, where the estate bequeathed exceeded the value of $200.00, and that it was also without jurisdiction to hear any proof for the probate of the will, for the reason that no legal citation had been issued out of the court and because ten days had not elapsed between the filing of the pretended will and the hearing of the proof offered in support of the same, and that a nuncupative will is, under the laws of Washington, invalid where the estate bequeathed exceeds the value of two hundred dollars ($200.00), and that even if valid, it could not dispose of real estate.

The bill alleged that the appellee Carrau had filed her petition in the Superior Court of the State, praying that the entire estate, including the real and personal property, should be distributed to her, and that the Superior Court would, complainants were informed and believed, distribute the estate to her; that she was insolvent, and if she received possession of the property she would dispose of the same and put the complainants to the necessity of instituting a multiplicity of suits; that the Superior Court was without jurisdiction to distribute the real estate or any part thereof; that the real estate and the rents and profits produced thereby since the death of the deceased, were the property of the complainants; that the administrator would obey the order of the Su-

perior Court and surrender the real estate and the rents and profits, to the appellee Carrau, and thereby the complainants would be deprived "of their said property without due process of law, in violation of the rights of your orators and each of them under the Fourteenth Amendment to the Constitution of the United States."

The bill further alleged that if the pretended probate be allowed to stand, the will was invalid, and that if valid it could not convey real estate; and it prayed that the appellee Marie Carrau be enjoined and restrained from receiving possession of the property or interfering with it in any manner during the pendency of the suit, and that upon final hearing she be perpetually restrained and enjoined from setting up any title or claim under the pretended will, and that the administrator be required to account to the complainants for the property.

Sec. 2671 of Pierce's Code of Washington (Ballinger's Code, Sec. 6374), provides:

"At any time after six months from the issuing letters testamentary or of administration, any heir, legatee or devisee may present his petition to the court that the legacy or share of the estate to which he is entitled may be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate."

It was under this section that the appellee Marie Carrau, as an alleged legatee and devisee of the deceased, had filed her petition praying the distribution of the estate to her, and in order to file this petition she was, of course, bound to set up as her muniment of title, the alleged decree probating the will made on the same day it was filed, and without notice to appellants or anyone else.

The statute of 1895, above set forth, distinctly provided:

"No person shall be deemed a devisee until the will has been probated."

It will be seen, therefore, that the title to the property of the deceased had immediately on his death passed to the appellants, and that appellee could not divest them of that title and become a devisee, unless she had a decree of the court probating the will. The statute above cited provided that

"No proof shall be received of any nuncupative will unless offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing and a citation issued to the widow or next of kin to the deceased, that they may contest the will if they think proper."

In other words, the title to the property had passed to the appellants, as heirs at law and next of kin of the deceased, subject to their being divested of their title by the probate of the will.

It appears from the bill that at the time it was filed, more than six months had elapsed since the death of the deceased. If the alleged will had not then been probated, appellants' title to the property was absolute. Whether the alleged will had been probated or not depended on whether the court entering the decree of probate had acquired jurisdiction to render a decision probating the will. If the court had no jurisdiction to probate the will, and the appellee Carrau, by using the decree of probate as a muniment of title was about to obtain from the administrator the property in his custody, belonging to the appellants, by the authority of the state court, appellants would be deprived of their property without due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the

United States. In other words, the question presented by the bill was not simply whether the decree probating the will was valid or void, but, being void for want of jurisdiction in the court to render it, the attempt to take the property of the appellants by authority of the void decree and under authority of the State Court, was a violation of their rights under the Fourteenth Amendment.

In

Scott v. McNeal, 154 U. S. 34,

this court had before it on writ of error to the Supreme Court of the State of Washington, the question whether Scott had been deprived of his property without due process of law. The court said:

"The plaintiff formerly owned the land in question, and still owns it, unless he has been deprived of it by a sale and conveyance, under order of the probate court of the county of Thurston and territory of Washington, by an administrator of his estate, appointed by that court on April 20, upon a petition filed April 2, 1888. * * *

The fundamental question in the case is whether letters of administration upon the estate of a person who is in fact alive have any validity or effect as against him. * * *

The 14th Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, 'Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislative, its executive or its judicial authorities. *Ex parte* Virginia, 100 U. S. 313, 318, 319; *Ex parte* Virginia, 100 U. S. 339, 346; Neal v. Delaware, 103 U. S. 370, 397. And the first one, as said by Chief Justice Waite in United States v. Cruikshank, 92 U. S. 542, 554, repeating the

words of Mr. Justice Johnson in Bank of Columbia v. Okely, 17 U. S. 4 Wheat. 235, 244, was intended 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'

Upon a writ of error to review the judgment of the highest court of a state upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that court's construction of a statute of the territory, or of the state, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the state, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another state. In every such case, this court must decide for itself the true construction of the statute. Huntington v. Attrill, 146 U. S. 657, 683, 684; Mobile & O. R. Co. v. Tennessee, *ante*, p. 793.

No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.

The words 'due process of law,' when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance.'"

The court then held that the statute of Washington did not warrant the conclusion that the probate court was

authorized to conclusively decide as against a living person that he was dead, and that his estate was therefore subject to be administered on and disposed of by the probate court, and the judgment of the Supreme Court of the State of Washington affirming the judgment of the Superior Court in the case where the record in the administration proceedings had been introduced against Scott, was reversed.

The sole ground upon which this court obtained jurisdiction on the writ of error to the Supreme Court of the State of Washington, was that the judgment rendered holding that Scott was dead, when he was in fact alive, under which judgment his property had been taken, was void, and that when that judgment was received in evidence as a muniment of title, Scott was thereby deprived of his property without due process of law.

In

Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 234,

this court, speaking of the Fourteenth Amendment, said:

"But it must be observed that the prohibitions of the amendment refer to all the instrumentalities of the State; to its legislative, executive and judicial authorities, and therefore, whoever by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the state, 'violates the constitutional inhibition, and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the state has clothed one of its agents with power to annul or evade it.' * * *

These principles were enforced in the recent case of Scott v. McNeal, 154 U. S. 34, in which it was held that the prohibitions of the 14th Amendment extended to 'all

acts of the state, whether through its legislative, its executive, or its judicial authorities'; and consequently, it was held that a judgment of the highest court of a state, by which a purchaser at an administration sale, under an order of a probate court, of land belonging to a living person who had not been notified of the proceedings, deprived him of his property without due process of law, contrary to the 14th Amendment."

In

Winsor v. McVeigh, 93 U. S. 274, 277,

Mr. Justice Field, delivering the opinion of this court, said:

"A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. *Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be by the law of its organization, over the subject matter.*"

At page 281 of the opinion, Mr. Justice Field said, in reference to proceedings *in rem*, and after citing Woodruff v. Taylor, 20 Vermont, 65,

"The court observed that in every court and in all countries where judgments were respected, notice of some kind was given, and that it was just as material to the validity of a judgment *in rem* that constructive notice at least should appear to have been given, as that actual notice should appear upon the record of a judgment *in personam*.

'A proceeding,' continued the court, 'professing to determine the right of property where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified by the name of a

judicial proceeding. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'"

In

Earle v. McVeigh, 91 U. S. 503, 510,

this court said:

"Even in proceedings *in rem*, notice is requisite in order that the sentence may have any validity. 'Every person,' said Marshall, C. J., 'may make himself a party to such a proceeding and appeal from the sentence, but notice of the controversy is necessary in order that one may become a party, and it is a principle of natural justice, of universal obligation, that before the rights of an individual can be bound by a judicial sentence, he shall have notice, either actual or implied, of the proceeding against him.'"

In

Hovey v. Elliott, 167 U. S. 409,

Mr. Justice White, in delivering the opinion of the court, said, at page 417:

"Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution. If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution is the only one possessing a power to disregard it. If such authority exists then in consequence of their estab-

lishment to compel obedience to law and to enforce justice, courts possess the right to inflict the very wrongs which they were created to prevent.

In Galpin v. Page, 86 U. S., 18 Wall, 350, the court said (p. 368):

'It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered.'

Again, in *Ex parte* Wall., 107 U. S. 289, the court quoted with approval the observations as to 'due process of law,' made by Judge Cooley, in his Constitutional Limitations, at page 353, where he says:

'Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College Case, 17 U. S. 4 Wheat. 518: 'By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgments only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.' * * *

The necessary effect of the judgment of the Supreme Court of the District of Columbia was to decree that a portion of the award made in favor of the defendant, in other words his property, belonged to the complainants in the cause. The decree therefore awarded the property of the defendant to the complainants upon the hypothesis of fact that by contract the defendant had transferred the right in or to this property to the complainant. *If the court had power to do this, by denying the right to be heard to the defendant, what plainer illustration could there be of taking property of one and giving it to another without hearing or without process of law?*"

In

Lavin v. Emigrant Industrial Savings Bank, 18 Blatch. 1,

approved by this court in the case of Scott v. McNeal, 154 U. S. 34, the plaintiff sued to recover $400.00 deposited by him with the defendant. The answer of the defendant admitted the deposit in the years 1865 and 1866, but set up as a defense that an application had been made on the 14th of February, 1877, to the Surrogate of the City and County of New York for letters of administration upon the estate of Lavin; that the Surrogate decided that Lavin had died intestate, and he thereupon appointed Brennan administrator; that the defendant had paid the deposit to the administrator. The question before the court was whether the appointment of the administrator by the Surrogate and the payment to the administrator by the defendant was legal as against the plaintiff, or whether it would, if given effect, deprive the plaintiff of his property without due process of law, in contravention of the Fourteenth Amendment to the Constitution.

After reviewing the authorities the court said:

"For these reasons it must be held that the proceeding taken under the laws of New York, which are set up as justifying the defendant's refusal to pay to the plaintiff the amount of his deposits, is void as to him, because it would deprive him of his property without 'due process of law.'"

In Roller v. Holly, 176 U. S. 398, this court had before it the question whether, in an action *in rem*, the statute of Texas authorizing service of process returnable within five days to be made upon a person outside

of Texas constituted due process of law, where the person served was at the time of service in Virginia. This court said:

"In short, for aught that appears here, parties may be called from the uttermost parts of the earth to come to Texas and defend suits against them within five days from the day the notice is served upon them. * * * *That a man is entitled to some notice before he can be deprived of his liberty or property is an axiom of the law to which no citation of authority would give additional weight.* * * *

Without undertaking to determine what is a reasonable notice to non-residents, we are of opinion, under the circumstances of this case, and considering the distance between the place of service and the place of return, that five days was not a reasonable notice, *or due process of law; that the judgment obtained upon such notice was not binding upon the defendant.*"

Appellants resided in Ireland. The statute of the state required that notice should be given to them. The least notice that they were entitled to was ten days, provided the service was personal service. (Pierce's Code, Sec. 2333.)

If personal service could not be made, then service by publication should have been made in the same manner as in an ordinary suit. (Pierce's Code, Sec. 2321.)

Where process issues out of the Superior Court of the State, and personal service cannot be made, service may be made by publication, but in that event the party so served is not required to appear until sixty days from the date of the first publication. (Pierce's Code, Sec. 333-337. Ballinger's Code, 4875-4879.)

If the proceeding to create the alleged nuncupative will a muniment of title be regarded as a proceeding *in rem*, still the statute required notice, and declared that the court should hear no proof until the notice had been given.

If ten days' notice in an action *in rem* instituted in Texas did not constitute due process of law as against a person served with process in the State of Virginia, we submit that a judgment divesting the appellants, then residing in Ireland, of their title to property inherited from the deceased, John Sullivan, was not due process of law, when founded on a citation issued by a court six thousand miles distant, and returnable on the same day, but at an hour already past when the process was issued.

The complainants as heirs at law and next of kin of the deceased, were the owners of his entire estate, and the title to the real estate had vested in them immediately upon the death of the deceased; that estate was in the custody of the administrator, who, of course, held it in trust for the heirs. Months after the death of the deceased the appellee Marie Carrau, without notice to the administrator and without notice to the complainants, and upon false testimony, procured the entry of a judgment which, if valid, divested the title of complainants to the property of the deceased and vested it in her; and she used that decree, rendered without jurisdiction, as a muniment of title. She asserted thereunder that she was the owner of the entire estate, and she made application to the State Court to exercise its authority and require the administrator of the estate to surrender to her possession of the real and personal property.

By the entry of the decree of probate, the title to the estate, which had vested in complainants on the death of the deceased, had become clouded. This cloud was

created by the act of the State Court, and the bill alleged that under authority of the State Court the administrator was about to surrender possession of the property to the appellee. That such a decree was void, is clear; the injury done thereby to complainants by impairing their title was depriving them of their property, and that deprivation had been effected without due process of law.

That the decree of probate was void is clearly established by the following authorities:

Smith v White, 32 Wash 414

Ball v. Clothier, 75 Pac. R. 1099 (Wash.).
In re Leonard's Will, 65 New J. L. 167.
Randolph v. Bayne, 44 Cal. 370.
Charlebois v. Bourdon, Admr., 6 Mont. 373.
Ashhurst v. Fountain, 67 Cal. 18.
Spencer v. Houghton, 68 Cal. 82.
Haws v. Clark, 37 Iowa 356.
Boales v. Shules, 29 Iowa 507.
Jones & Magee Co. v. Boggs, 63 Iowa 589.
Sprole v. Marshall, 4 Iowa 344.
Hodges v. Brett, 4 Iowa 345.
Melbourn v. Fouts, 4 Iowa 346.
Fernekes v. Case, 75 Iowa 152.
Joiner v. Delta Bank, 71 Miss. 382 (14 So. 464).
Hunsaker v. Coffin, 2 Or. 107.
Northcut v. Lemery, 8 Or. 317, 323.
Lewis v. Bishop, 19 Wash. 312.
Everett Water Co. v. Fleming, 26 Wash. 364.

If, in a suit in ejectment, the admission in evidence of a judgment rendered without jurisdiction for want of notice, and therefore not constituting due process of law, is depriving the person, whose rights are affected thereby, of his property in a manner forbidden by the Fourteenth Amendment to the Constitution of the United States, can

it be denied that to allow such judgment to be used as a muniment of title to take the property of complainants from the possession of the administrator, who holds it in trust for them, is an act equally forbidden by the amendment, and therefore one which can be prevented by injunction before it is consummated, instead of being annulled after its execution?

Vicksburg Waterworks v. City of Vicksburg, 185 U. S. 65.
Walla Walla v. Walla Walla Waterworks, 172 U. S. 1.
Pac. Elec. R. Co. v. Los Angeles, 194 U. S. 112.
Pac. Gas Improvement Co. v. Ellert, 64 F. 421.
Nashville C. & St. L. Ry. v. Taylor, 86 Fed. 168.

In the case at bar, not only did the bill show that there was involved in the suit the application of the Fourteenth Amendment to the Constitution of the United States, but the opinion of the Circuit Court shows that that court in effect held that to give any effect to the decree, probating the alleged will, which was rendered without notice to anyone and before the court had acquired any jurisdiction to hear any proof, would have the effect of depriving complainants of their property without due process of law. The opinion of the trial court shows that the court held that while the alleged will never had been made, yet if it had been made and if the deceased thereby had intended to convey to the appellee Marie Carrau his entire estate, the complainants could not be disinherited by the alleged will, because it had not been probated within six months from the death of the deceased.

In order to hold that the alleged will had not been probated within six months after the death of the de-

ceased, the court was obliged to hold that the decree of probate was a nullity. It will be seen, therefore, that the effect of the decree of probate was a vital question in the case. If the alleged will had never been probated, then the title of appellants was absolute. If the alleged will had been probated, and if it conveyed real estate, they might have been disinherited. It appears, therefore, that not only was the question of the application of the Constitution involved, but that the Constitution was applied by the trial court in deciding the case.

III.

Assuming, therefore, that there was presented by the bill a case involving the construction or application of the Constitution of the United States, the question arises, to what court should the appellee Marie Carran have appealed when the decree of the Circuit Court was rendered in favor of the complainants?

It is clear from the decisions of this court that if a constitutional question was presented by the bill, and the jurisdiction of the Circuit Court was invoked upon no other ground, this court would have exclusive jurisdiction of an appeal from the decree of the Circuit Court.

> *Union & Planters' Bank v. Memphis*, 189 U. S. 71.
> *American Sugar Ref. Co. v. New Orleans*, 181 U. S. 277.

If the jurisdiction of the Circuit Court was dependent on a federal question other than one of those specified in Sec. 5 of the Act of March 3, 1891, then the Circuit Court

of Appeals would have jurisdiction of an appeal from the Circuit Court, but its decision would not be final.

Northern Pacific R. R. Co. v. Soderberg, 188 U. S. 526.

Howard v. U. S. to the use of David Stewart, 184 U. S. 676.

If the suit is one where the jurisdiction of the Circuit Court is invoked because the construction or application of the Constitution of the United States is involved, then it is one which may be brought directly to this court from the Circuit Court, and the whole case is open upon such appeal.

Giles v. Harris, 189 U. S. 475.

Cummings v. Chicago, 188 U. S. 410.

Pac. Elec. R. R. Co. v. Los Angeles, 194 U. S. 112.

Field v. Barber Asphalt Pav. Co., 194 U. S. 618.

Holder v. Aultman M. Co., 169 U. S. 81.

Penn Mutual Insurance Co. v. Austin, 168 U. S. 685.

Loeb v. Columbia Township, 179 U. S. 472.

Whitten v. Tomlinson, 160 U. S. 231.

Chappell v. U. S., 160 U. S. 499.

Horner v. U. S., 143 U. S. 570.

This is so, although jurisdiction also exists because of diversity of citizenship.

Davis & Farnum Co. v. Los Angeles, 189 U. S. 207.

Field v. Barber Asphalt Pav. Co., 194 U. S. 618.

If diversity of citizenship is shown by the bill, and in addition thereto it appears by the bill that the case is one involving the construction or application of the Constitution of the United States, if the case could be taken to the Circuit Court of Appeals its decree would not be final, because the jurisdiction of the Circuit Court would

not have been dependent entirely on diverse citizenship; and yet, a direct appeal could have been taken to this court.

In

American Sugar Ref. Co. v. New Orleans, 181 U. S. 277,

this court said:

"The intention of the act in general was that the appellate jurisdiction should be distributed, and that there should not be two appeals, but in cases where the decisions of the courts of appeals are not made final it is provided that 'there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs' (Sec. 6).

And the right to two appeals would exist in every case (the litigated matter having the requisite value), where the jurisdiction of the circuit court rested solely on the ground that the suit arose under the Constitution, laws, or treaties of the United States, if such cases could be carried to the circuit courts of appeals, for their decisions would not come within the category of those made final. * * *

* * * and as those cases fall strictly within the terms of section 5, the appellate jurisdiction of this court in respect of them is exclusive."

In this case the court felt it necessary to modify the language which had been used in the opinion in the case of Carter v. Roberts, 177 U. S. 496, and after quoting from the opinion in the Carter case, said:

"But language should not have been used susceptible of the meaning that in cases where the jurisdiction

below is invoked on the ground of diverse citizenship the circuit court of appeals might decline to take jurisdiction, or, in other words, might dismiss the appeal or writ of error for want of jurisdiction. The mere fact that in such a case one or more of the constitutional questions referred to in section 5 *may have so arisen* that a direct resort to this court might be had, does not deprive the court of appeals of jurisdiction, or justify it in declining to exercise it."

It is plain from this decision that had the Constitutional question been presented in the bill along with the claim of jurisdiction on the ground of diverse citizenship, the decision would have been that the Circuit Court of Appeals had no jurisdiction. The court was careful to point out that the Constitutional question first appeared *after* the jurisdiction of the Circuit Court had attached by reason of diverse citizenship. At page 280 the court said:

"The jurisdiction referred to is the jurisdiction of the circuit court, and as the judgment of the court of appeals is made final in all cases in which the jurisdiction of the circuit court *attaches solely by reason of diverse citizenship*, it follows that the court of appeals has power to review the judgment of the circuit court in every *such case*, notwithstanding constitutional questions may have arisen *after the jurisdiction of the circuit court attached*, by reason whereof the case became embraced by section 5."

If the mere existence of diverse citizenship was sufficient to vest jurisdiction in the Circuit Court of Appeals, regardless of the fact that the bill also invoked the jurisdiction of the Circuit Court on the ground of a constitutional question being involved, it would have been a sim-

ple matter to have said that the existence of diverse citizenship vested jurisdiction of the appeal in the Circuit Court of Appeals. It would have been entirely unnecessary to have carefully pointed out that the time when the Constitutional question arose in the case was *after* the jurisdiction of the Circuit Court had *attached by reason of diversity of citizenship.*

In

Cinn. H. & D. R. Co. v. Thiebaud, 177 U. S. 615,

the Circuit Court of Appeals certified certain questions to this Court, among them the following:

1. Has the Circuit Court of Appeals jurisdiction of a writ of error to the Circuit Court in a case in which it is claimed that a law of a state is in contravention of the Constitution of the United States, where the record presents other questions not involving the Constitution of the United States?

2. Has the Circuit Court of Appeals jurisdiction of a writ of error to the Circuit Court in a case in which it is claimed that the law of a state is in contravention of the Constitution of the United States, where the record presents other questions not involving the Constitution of the United States, which might require a reversal of the judgment without reference to such constitutional questions?

3. A third question was certified, as to whether a certain instruction disclosed a case in which it was claimed that the law of a state was in contravention of the Constitution of the United States.

This court said:

"The certificate shows that no question as to the constitutionality of the statute of Indiana relied on by

the plaintiff below, *was raised* or considered or decided *in the circuit court*, but that the objection made its appearance for the *first time in the assignment of errors* in the circuit court of appeals.

The third question propounded in the certificate must be answered in the negative, and we do not deem it necessary to answer the others."

In this case diversity of citizenship existed. It is plain that had the constitutional question appeared in the original pleading invoking the jurisdiction of the Circuit Court, the Supreme Court would have passed on the jurisdiction of the Circuit Court of Appeals when that question was certified to it, or would have held that the Circuit Court of Appeals was without jurisdiction to certify. It appearing, however, that the case in the Circuit Court of Appeals was one of which it had undoubted jurisdiction, it was unnecessary to answer a question propounded on a state of facts not in the case.

In

Union & Planters' Bank of Memphis v. Memphis,
189 U. S., 71,

diversity of citizenship did not exist. The jurisdiction of the Circuit Court had been maintained. An appeal from the Circuit Court had been taken to the Supreme Court of the United States. An appeal had also been taken to the Circuit Court of Appeals, which had affirmed the decree of the Circuit Court. From the decree of the Circuit Court of Appeals an appeal had been taken to this court. Mr. Chief Justice Fuller, in delivering the opinion of this court, said:

"Diversity of citizenship did not exist, and the jurisdiction of the Circuit Court rested solely on the ground

that the cause of action arose under the Constitution of the United States. The appeal lay directly to this court under section 5 of the Judiciary Act of March 3, 1891 (26 Stat. at L., 826, chap. 517, U. S. Comp. Stat. 1901, p. 547), and not to the circuit court of appeals. American Sugar Ref. Co. v. New Orleans, 181 U. S. 277. Nevertheless, an appeal having been prosecuted to the latter court, and having there gone to decree, an appeal was allowed to this court because the judgment was not made final in that court by Sec. 6 of the act. But the case being here, and the jurisdiction of the circuit court having depended on the sole ground that it arose under the Constitution, we are constrained to reverse the decree of the circuit court of appeals, not on the merits, but by reason of the want of jurisdiction in that court. If this were not so, the right to two appeals would exist in every similar case, notwithstanding, as we have repeatedly held, that such was not the intention of the act."

If, in addition to the constitutional question, diversity of citizenship had existed, the decision of the Court of Appeals would not have been final, because the jurisdiction of the Circuit Court would not have been dependent entirely upon diversity of citizenship, and the case would also have been one wherein an appeal would lie directly from the decree of the Circuit Court to this Court. If, therefore, the reason for denying jurisdiction to the Circuit Court of Appeals was that if it exercised jurisdiction the right to two appeals would exist, then it follows that the same reason applies when the diversity of citizenship does exist along with a constitutional question, equally with a case in which the constitutional question is the only ground on which jurisdiction is invokede.

The citation of the American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, in support of the statement of the opinion that unless jurisdiction was denied to the Cir-

cuit Court of Appeals in such case, the right to two appeals would exist, shows clearly that the Circuit Court of Appeals has jurisdiction of cases in which a direct appeal will lie to the Supreme Court of the United States, only when, if a decision is rendered by the Circuit Court of Appeals, its decision is final because the jurisdiction of the Circuit Court was invoked on the ground of diversity of citizenship only, and the constitutional question appeared later in the case.

The various Circuit Courts of Appeals have placed this construction upon the decision of this court in American Sugar Ref. Co. v. New Orleans, *supra*.

In

Keyser v. Lowell, 117 Fed. 400,

the Circuit Court of Appeals for the Eighth Circuit, in maintaining its jurisdiction, said:

"Where the jurisdiction of the circuit court *originally attaches solely by reason of diverse citizenship*, and a constitutional question *subsequently arises*, the circuit court of appeals has jurisdiction to review the decision of that question below and to finally determine it. American Sugar Ref. Co. v. City of New Orleans, 181 U. S. 277."

In

City of Owensboro v. Owensboro Water Co., 115 Fed. 318,

the Circuit Court of Appeals for the Sixth circuit dismissed an appeal for want of jurisdiction. Diversity of citizenship did not exist. The jurisdiction of the Circuit Court had been invoked only because of the constitutional question. The court said:

"The question is, therefore, whether the appeal in this case is one comprehended within the classes of cases enumerated by section 5 of the act referred to. If it is, it must be taken to the Supreme Court, for it is only of such cases as remain after those enumerated in section 5 have been carved out of the whole body of appellate cases that the circuit courts of appeals have jurisdiction; and as was said by Chief Justice Fuller in American Sugar Refining Co. v. City of New Orleans, 181 U. S., 277: 'Where it appears on the record, from plaintiff's own statement, in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controvery as to a right which depends on the construction or application of the constitution or some law or treaty of the United States, (Water Co. v. Keyes, 96 U. S., 199; Blackburn v. Gold Min. Co., 175 U. S. 571; W. U. Tel. Co. v. Ann Harbor R. Co., 178 U. S. 239),' such a case falls within the exclusive appellate jurisdiction of the supreme court. Looking at the language of the act, we can see no good reason for thinking that the destination of the appeal is altered by the circumstance that other questions besides those enumerated in section 5 are comprehended in the controversy which the case presents. It is still, and none the less, a case in which a question arises of the character specified in designating what cases must go by appeal or writ of error to the supreme court. The appeal or writ of error in all cases, in which no question of the character described in section 5 is involved, goes to the circuit court of appeals under the operation of section 6, which expressly bounds the appellate jurisdiction of the latter court in that way."

At page 323, the court says:

"But if the original jurisdiction is founded *entirely* upon the ground of *diversity of citizenship*, and a constitutional question *becomes involved*, the appeal might go to *either* court. If it should go to the supreme court, that court would, of course, decide the whole case; if to the court of appeals, that court might also decide the whole

case, or certify the constitutional question to the supreme court, and, on receiving its answer, decide the case. If it should decide the constitutional question in the first instance, the unsuccessful party might apply for the writ of certiorari under the provision of the sixth section to correct any mistake made by the court of appeals upon the subject. Thus is accomplished the whole scheme by which congress intended to give to the supreme court, by one method or another, appellate power over all constitutional questions."

In

City of Owensboro v. Owensboro Water Co., 191 U. S. 358,

this court reversed the decree of the Circuit Court on a direct appeal. In the statement of the case this court makes the following statement:

"The city then took an appeal to circuit court of appeals. The appeal was dismissed on the ground that the jurisdiction of the circuit court having been invoked on a constitutional question, the appeal should have been taken directly to this court. 53 C. C. A. 146, 115 Fed. 318. The city then brought the case here from the circuit court."

Inasmuch, however, as the decree of the Court of Appeals, if it had jurisdiction, would be subject to review by this court in a case where the jurisdiction of the Circuit Court was founded both on diversity of citizenship and on the ground that a constitutional question was involved, and inasmuch as the Supreme Court would also have jurisdiction to review the decree of the Circuit Court on direct appeal therefrom, and as the Supreme

Court would have jurisdiction of the entire case, whichever court it came from, it is clear that there is just as much reason for denying the jurisdiction of the Circuit Court of Appeals in a case where jurisdiction of the Circuit Court is invoked both on the ground of diversity of citizenship and on the ground of a constitutional question being involved, as in a case where the jurisdiction of the Circuit Court is invoked solely on the ground of a constitutional question being involved.

In

Ill. Cent. R. R. Co. v. Adams, 180 U. S. 28,

diversity of citizenship existed. A temporary injunction was granted. An appeal was taken to the Circuit Court of Appeals. That court dismissed the appeal on the ground that a constitutional question was involved. (93 Fed., 852). The Circuit Court dismissed the suit for want of jurisdiction. An appeal was then taken to this court from the decree of the Circuit Court, and the question of jurisdiction certified. This court held that the Circuit Court had jurisdiction both on the ground of diverse citizenship and because of a question arising under the Constitution of the United States.

In the case of

Wright v. McFarlane & Co., 122 Fed. 770,

the Circuit Court of Appeals for the Ninth Circuit dismissed an appeal for want of jurisdiction, and while it is true that in that case diversity of citizenship did not exist, the opinion of the court shows that it would have made no difference had diversity of citizenship existed.

In commenting upon the case of Penn. Mutual Life Insurance Co. v. Austin, 168 U. S. 685, the court said:

"It will be observed that in this case the jurisdiction of the Circuit Court was invoked upon the ground of diverse citizenship of the parties to the action, but the bill disclosed a second ground of jurisdiction in the allegations claiming that the ordinances of the city and law of the state were in contravention of the Constitution of the United States. These allegations presented a case in which the jurisdiction of the Circuit Court was not entirely dependent upon the opposite parties to the suit or controversy being citizens of different states, and therefore, under section 5 of the Act of March 3, 1891, the Supreme Court had exclusive appellate jurisdiction."

After citing the case of American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, and giving the history of that case, the court proceeded:

"The Supreme Court was then petitioned for a writ of certiorari or mandamus to compel the Circuit Court of Appeals to try the cause. The writ of certiorari was issued, the court holding that under sections 5 and 6 of the act of March 3, 1891, the Circuit Courts of Appeals have power to review judgments of the Circuit Courts *when the original jurisdiction attaches solely by reason of diverse citizenship, notwithstanding the fact that constitutional questions may have arisen after the jurisdiction of the Circuit Court attached;* and that in all cases the judgments of the Circuit Courts of Appeals are made final, and no review would be made by the Supreme Court, unless the constitutional questions involved therein were certified to that court by the Courts of Appeals. It was declared that the intention of the act was to distribute the appellate jurisdiction, and not in general to permit two appeals; that, in accordance with this intention, where a case appeared from the pleadings to really and substantially involve a controversy as to a right depending upon the construction or application of the Constitution or some law or treaty of the United States, it fell strictly

within the terms of section 5 of the Act, and the appellate jurisdiction of the Supreme Court in respect to such case was exclusive. The ruling was followed and approved in Hugnley Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290, 295. See also, *Ex parte* Lennon, 150 U. S. 393, 399; Osborne v. Florida, 164 U. S. 650, 656.

The decisions of the Supreme Court in these cases clearly establish the *line* of appellate jurisdiction between the Circuit Courts of Appeals and the Supreme Court of the United States where a constitutional question is involved, and determine that, where the jurisdiction of the Circuit Court is originally invoked upon the ground that the controvery is as to a right depending upon the construction or application of the Constitution or some law or treaty of the United States, then the appellate jurisdiction of the Supreme Court in respect to such case is exclusive, and the Circuit Courts of Appeals have no jurisdiction to hear and determine the appeal."

In

Howard v. U. S. to the use of Stewart, 184 U. S. 676,

diversity of citizenship existed. Jurisdiction also appeared in the Circuit Court because the suit was upon the bond of a Clerk of the United States Court. The case was one, therefore, which could not be brought directly to this court from the Circuit Court, because it involved the construction of a *law* of the United States. The jurisdiction of the Circuit Court of Appeals, however, was not final, because the jurisdiction of the Circuit Court did not depend entirely upon diversity of citizenship. Mr. Justice Harlan was careful to point out that the case was one which could not be brought directly to this court. If the case had been one which could have been brought directly to this court, and was also one of which the Circuit Court of Appeals was granted jurisdiction, then the

decision of the Circuit Court of Appeals would have been final. At page 681, Mr Justice Harlan said:

"It results that, although the petition shows a case of diverse citizenship, jurisdiction was not dependent entirely upon such citizenship. Jurisdiction was likewise invoked, and rightfully upon Federal grounds. And as the case was one which could not have been brought here directly from the circuit court, the final judgment of the circuit court of appeals could be reviewed in this court upon writ of error sued out by the defendants."

It is respectfully submitted that the foregoing authorities establish the following rules of construction of the Act of March 3, 1891, with reference to the jurisdiction of this Court and of the Circuit Courts of Appeals:

1. When the jurisdiction of the Circuit Court is invoked on the ground of diverse citizenship only, and the jurisdiction is not in issue in the Circuit Court, the Circuit Court of Appeals has final jurisdiction of all questions in the case, on an appeal being taken to that Court.

2. When the jurisdiction of the Circuit Court is invoked upon the ground of diverse citizenship and also upon grounds other than those mentioned in section 5, and the jurisdiction of that Court is not in issue there, then the Court of Appeals has appellate jurisdiction and the Supreme Court has no direct appellate jurisdiction, but the decree of the Circuit Court of Appeals is not final, because the jurisdiction of the Circuit Court was not dependent entirely upon diverse citizenship.

3. When the jurisdiction of the Circuit Court is invoked, not on the ground of diverse citizenship nor upon any ground mentioned in section 5, but upon the ground that the suit arises under the laws of the United States,

and the jurisdiction of the Circuit Court is not in issue there, then the Circuit Court of Appeals has appellate jurisdiction, and the Supreme Court has no direct appellate jurisdiction, but the decree of the Circuit Court of Appeals is not final.

4. When the jurisdiction of the Circuit Court is invoked solely upon the ground that the case is one arising under the 4th, 5th or 6th subdivisions of section 5 of the Act of March 3, 1891, then the jurisdiction of the Supreme Court is exclusive and the Circuit Court of Appeals is without jurisdiction.

5. When the jurisdiction of the Circuit Court is invoked both on the ground of diverse citizenship, and also upon one of the grounds mentioned in the 4th, 5th or 6th subdivisions of section 5, then the case must be taken directly to the Supreme Court and the Circuit Court of Appeals has no jurisdiction.

6. When the jurisdiction of the Circuit Court is invoked solely upon the ground of diversity of citizenship, and in the progress of the case a question arises which, if pleaded in the bill, would have given exclusive jurisdiction on appeal to the Supreme Court, then jurisdiction may be exercised directly by the Supreme Court, or by the Circuit Court of Appeals. If an appeal in such case should be taken to the Circuit Court of Appeals, its decree would be final, because the jurisdiction of the Circuit Court was dependent entirely upon diversity of citizenship.

7. When the jurisdiction of the Circuit Court is in issue in that court, the Circuit Court of Appeals is without jurisdiction to decide that question.

This construction of the Act will accomplish the purpose of preventing two appeals where a direct appeal

could have been taken to this court. In other words, the only case in which an appeal from the decree of the Circuit Court of Appeals to this court will lie as a matter of right, is when the question involved cannot be determined on a direct appeal from the decree of the Circuit Court to this Court. On the other hand the Circuit Court of Appeals has no jurisdiction of a question which can be determined on a direct appeal to this Court unless the decree of the Circuit Court of Appeals will be final if an appeal be taken to that Court. To hold, however, that the mere existence of diversity of citizenship is sufficient to vest the Circuit Court of Appeals with jurisdiction of an appeal in a case where the jurisdiction of the Circuit Court was invoked upon constitutional grounds, as well as upon the ground of diversity of citizenship, is to frustrate what this Court has repeatedly decided was the express intention of the act, namely, to prevent two appeals.

We submit, therefore, that inasmuch as the jurisdiction of the Circuit Court was originally invoked on the ground that the case was one involving the application of the Constitution of the United States, the Circuit Court of Appeals was without jurisdiction, and its decree should be reversed with the direction to dismiss the appeal of Marie Carrau from the decree of the Circuit Court.

IV.

Assuming, for the sake of argument, that the jurisdiction of the Circuit Court was invoked solely on the ground of diversity of citizenship, still we submit that the Circuit Court of Appeals had no jurisdiction to determine the question of the jurisdiction of the Circuit

Court, because the jurisdiction of that Court was in issue in the Circuit Court.

The appellee Marie Carrau in the Circuit Court filed a motion to dismiss because the matters pleaded in the bill were "not cognizable in the Federal Court" (R. p. 29), and also another motion that the action abate "for the reason that this court has no jurisdiction of the subject matter of this action" (R. p. 24). The jurisdiction of the Circuit Court, therefore, as a Federal Court, was in issue. It is true that that Court sustained the jurisdiction.

Section 5, of the Act of March 3, 1891, is as follows:

"That appeals or writs of errors may be taken from the District Courts, or from the existing Circuit Courts, direct to the Supreme Court in the following cases:

In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision. * * * "

"Sec. 6. That the Circuit Courts of Appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the District Court and the existing Circuit Courts in all cases other than those provided for in the preceding section of this Act, unless otherwise provided by law, and the judgments or decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy, being aliens and citizens of the United States or citizens of different States."

The Circuit Court of Appeals for the Second Circuit uniformly holds that it, while having jurisdiction of the case, has no jurisdiction to decide the question of jurisdiction when the jurisdiction of the Circuit Court was in issue in the Circuit Court.

In

Sun Printing & Pub. Ass'n. v. Edwards, 194 U. S. 377,

the Circuit Court of Appeals for the Second Circuit certified to this Court the question of the jurisdiction of the Circuit Court. In the certificate the following statement was made:

"Upon examination of the record it appears that in addition to various questions as to the merits of the controversy which are presented by the assignments of error, the jurisdiction of the Circuit Court is in issue. Under Sections 5 and 6 of the Act of March 3, 1891, writs of error in such cases are to be taken direct to the Supreme Court, *and the grant of appellate jurisdiction to the Circuit Courts of Appeal does not include such cases.*

In accordance, therefore, with the practice indicated in Cincinnati, H. & D. Co. v. Thiebaud, 177 U. S. 615, and American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, and followed by this Court in U. S. v. Lee Yen Tai, 51 C. C. A. 299, this Court elects to reserve judgment upon the other questions, and to certify the question of jurisdiction to the Supreme Court."

In answering the question of jurisdiction certified, this Court did not comment upon the statement of the Circuit Court of Appeals for the Second Circuit, to the effect that the determination of the question of jurisdiction where the jurisdiction of the Circuit Court was in issue, was not within the grant of appellate jurisdiction to the Circuit Courts of Appeal.

In

Fisheries Co. v. Lennen, 130 Fed. 533,

decided April 21, 1904, the Circuit Court of Appeals for the Second Circuit, said:

"The first assignment is based upon the contention that the Circuit Court had no jurisdiction because the matter in demand does not exceed $2000. Under the construction adopted in this Circuit of the sixth section of the Evart's Act (Act of March 3, 1891, c. 517, 26 Stat. 828 [U. S. Comp. St. 1901, p. 549]), the question of the jurisdiction of the court below is not before us for review. United States v. Lee Yen Tai, 113 Fed. 465, 51 C. C. A. 299."

In

U. S. v. Lee Yen Tai, 113 Fed. 465,

the Circuit Court of Appeals for the Second Circuit, in considering the question of its jurisdiction to decide a constitutional question, said:

"The Circuit Court of Appeals has no jurisdiction in any case in which the constitutionality of any law of the United States or the validity or construction of any treaty is drawn in question. In such cases an appeal or writ of error lies directly to the Supreme Court, and the Circuit Court of Appeals can only exercise appellate jurisdiction in cases other than those. Authority, however, is given the Circuit Court of Appeals in every 'subject within its appellate jurisdiction' to certify to the Supreme Court any question of law concerning which it desires the instruction of that Court 'for its proper decision.' Act of March 3, 1891, Sec. 6. The Supreme Court in several cases has held that, although a case which has been brought to the Circuit Court of Appeals by an appeal or writ of error may involve a question which that Court has no jurisdiction to entertain, it may nevertheless, if the case also involves other questions, determine those questions, and certify to the Supreme Court the question which it may not entertain. U. S. v. Jahn, 155 U. S. 109; Carter v. Roberts, 177 U. S. 496."

After quoting from the Carter case, the Circuit Court of Appeals proceeded:

"This language is relied upon by counsel for the appellant as meaning that the Circuit Court of Appeals may in deciding the whole case decide the constitutional question, or, as in this case, a question involving the construction of a treaty. We do not regard it as intended to bear that meaning, and, as we read the language, it means simply that the Circuit Court of Appeals may decide the whole case by affirming or reversing the decision under review without passing upon the constitutional or treaty question, or, if it sees fit, may reserve judgment and certify that question."

In

St Louis Cotton Compress Co. v. American Cotton Co., 125 Fed. 196,

the Circuit Court of Appeals for the Eighth Circuit dismissed an appeal for want of jurisdiction, and said:

"Act of March 3, 1891, c. 517, 26 Stat. 826, which created the Circuit Courts of Appeals, provides in section 5, (26 Stat. 827), that 'appeals or writs or error may be taken from * * * the existing Circuit Courts directly to the Supreme Court * * * in any case in which the jurisdiction of the Court is in issue,' and in section 6 (26 Stat. 828), that the Circuit Courts of Appeals 'shall exercise appellate jurisdiction to review by appeal or writ of error final decision in the * * * existing Circuit Courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law.' If, therefore, a writ of error could have been taken from the Supreme Court directly to the Circuit Court to review the question here presented under

section 5 in this suit, this is not one of the other cases of which this court is given jurisdiction."

At page 201 the Court said:

"The second objection to the dismissal of the writ is that the Circuit Courts of Appeals are given jurisdiction by section 6 of the Act creating them to review all jurisdictional questions which arise in the Circuit and District Courts of the United States in cases in which their jurisdiction is based solely on diversity of citizenship. A careful reading of section 6, however discloses no such grant of power. Upon this subject that section provides only that the Circuit Courts of Appeals 'shall exercise appellate jurisdiction to review by appeal or writ of error final decision in the * * * existing Circuit Courts in all cases other than those provided for in the preceding section of this Act, unless otherwise provided by law, and the judgments or decrees of the Circuit Courts of Appeals shall be final * * * in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States.' *But it is only in cases not provided for by the preceding section that the Circuit Courts of Appeals are given appellate jurisdiction, and no case in which jurisdiction of the Circuit Court is in issue falls in the class of cases not provided for by section 5.*"

At page 202, the Court said:

"Section 6 does provide that in cases in which the jurisdiction of the Circuit Court is founded on diversity of citizenship the judgments and decrees of the Circuit Court of Appeal shall be final. *But this provision in no way limits the jurisdiction of the Supreme Court under section 5, nor does it enlarge the appellate jurisdiction of the Courts of Appeals.* * * *

The cases of American Sugar Refining Co. v. New Orleans, 181 U. S. 277, 281, and Ayres v. Polsdorfer, 187 U. S. 585, do not lead to a different result. The question there considered was the jurisdiction of the Circuit

Courts of Appeals to hear and determine constitutional questions arising in cases in which the jurisdiction of the Circuit Courts was founded on diversity of citizenship. The jurisdiction of the Circuit Courts over the subject matters and the parties to the suits was not challenged or in issue in those cases, and, as the Supreme Court well said in Ayres v. Polsdorfer at page 595, 187 U. S., 'as to such questions other rules apply than those we have expressed in this opinion.' "

In this connection it should be borne in mind that the real question in the case of

McLish v. Roff, 141 U. S. 661,

which was the first decision rendered by this Court construing the Act of March 3, 1891, establishing the Circuit Court of Appeals, was whether the question of the jurisdiction of the Circuit Court could be certified to this Court before final judgment. That was the only question involved in that case.

In the case of

U. S. v. Jahn, 155 U. S. 109,

the jurisdiction of the Circuit Court was *not in issue in that Court*. The case, therefore, did not fall within the first subdivision of section 5. It was not a case, therefore, in which a direct appeal could have been taken to this Court on the jurisdictional question. The Circuit Court of Appeals therefore had undoubted jurisdiction to determine the question of jurisdiction, because in the Circuit Court the case contained none of the questions provided for by section 5. Notwithstanding that fact, this Court said:

"It is conceded that the United States assigned errors on the merits, as well as the error under consideration,

and as the question of *jurisdiction* lay at the threshold, and the *intent* of the Act of March 3, 1891, was *that that question should be determined by this Court*, the Circuit Court of Appeals properly suspended any consideration of the case upon the merits until that question could be determined upon certificate."

As stated, in the Jahn case, the jurisdiction of the Circuit Court *was not in issue in the Circuit Court.* The first subdivision of section 5 of the Act of March 3, 1891, specifically provides that a direct appeal may be taken to this Court in all cases where the jurisdiction of the Circuit Court is in issue. The grant of appellate jurisdiction to the Circuit Court of Appeals is in other cases than those provided for in section 5, and, as stated in

St. Louis Cotton Compress. Co. v. American Cotton Co., 125 Fed. 196,

"But it is only in cases not provided for by the preceding section that the Circuit Courts of Appeals are given appellate jurisdiction, and no case in which jurisdiction of the Circuit Court is in issue falls in the class of cases not provided for by section 5."

It is therefore respectfully submitted that the Circuit Court of Appeals had no jurisdiction to determine that the Circuit Court had no jurisdiction, when the jurisdiction of the Circuit Court *was in issue in the Circuit Court.*

We submit, therefore, that as the Circuit Court of Appeals had no jurisdiction of the appeal, which counsel for appellee admit, in their motion to dismiss, is the case, the decree of the Circuit Court of Appeals should be

reversed with directions to dismiss the appeal of Marie Carrau.

If, on the other hand, the Circuit Court of Appeals did have jurisdiction, and its decree was final, as the only question decided was the jurisdiction of the Circuit Court, and as

"The intent of the Act of March 3, 1891, was that that question should be determined by this Court,"

(U. S. v. Jahn, 155 U. S. 109),

the writ of certiorari applied for in April last by appellants should be granted.

That the Circuit Court had jurisdiction of the suit, both on account of the subject matter and because of diversity of citizenship existing between the parties, and that all parties who had any interest in the matter were before that court, is, we believe, plainly shown by the briefs on file in this court on the application for *certiorari*, to which briefs we respectfully ask the attention of the court, if it should become necessary to consider the application for the writ of *certiorari*.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1903.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Appellees and Petitioners,*

v.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAN, *Appellants and Respondents.*

No. [illegible]

On Petition for Writ of Certiorari to the Circuit Court of Appeals for the Ninth Circuit.

REPLY BRIEF OF PETITIONERS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1903.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Appellees and Petitioners,* v. TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Appellants and Respondents.*	No. 593

On Petition for Writ of Certiorari to the Circuit Court of Appeals for the Ninth Circuit.

REPLY BRIEF OF PETITIONERS

We desire to reply to the briefs of counsel for the respondent, Marie Carrau, filed in opposition to the application for *certiorari* in the above entitled suit.

We will first ask the attention of the Court to a few errors in the briefs of counsel for respondent. Throughout their briefs they repeatedly refer to the "Probate Court," as though, in the State of Washington there were a separate Probate Court. They also speak of the department of the Superior Court exercising probate jurisdiction, as though there were a department of that Court

recognized by law as being vested with probate jurisdiction. There is no foundation for these assumptions. In the State of Washington, the Superior Court is created by the constitution of the State. Section 6, Article IV, of the State Constitution, is as follows:

"The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, * * * of all matters of probate * * * the Superior Court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court."

Section 10, Article XXVII of the state constitution is as follows:

"When the State is admitted into the Union, and the Superior Courts in the respective counties organized, the books, records, papers and proceedings of the Probate Court in each county, and all causes and matters of administration pending therein shall, upon the expiration of the terms of office of the Probate Judges on the second Monday in January, 1891, pass into the jurisdiction and the possession of the Superior Court of the same county created by this constitution, and the said Court shall proceed to final judgment or decree, order or other determination in the several matters and causes as the territorial Probate Court might have done if this constitution had not been adopted. And until the expiration of the term of office of the Probate Judges, such Probate Judges shall perform the duties now imposed upon them by the laws of the territory. The Superior Courts shall have appellate and revisory jurisdiction over the decisions of the Probate Courts as now provided by law, until such latter courts expire by limitation."

"The constitution does not make the Superior Courts Probate Courts. On the contrary, it vests the Superior Courts with jurisdiction 'of all matters of probate,' hence the Court is not shorn of its general powers simply because the case before it may be one which was cognizable formerly in a court of probate. It possesses in every case and at all times its powers as a court of superior and general jurisdiction, and among these is the power to hear and determine the question to whom a bequest made by a decedent rightfully belongs. The Statute therefore, can neither add to nor take away the power, and it is immaterial to inquire whether or not one conferring such power is in existence."

Reformed Presbyterian Church vs. McMillan, 31 Wash., 643.

"When the constitution was adopted, the Superior Court was vested with general jurisdiction, such as was exercised by the territorial district courts, and also with jurisdiction in probate matters, and the Probate Court, as an independent tribunal, was abolished."

Ball et al vs. Clothier et al, 75 Pacific, 1099 (34 Wash. p.—).

"In this state we have no Probate Court, properly speaking, as distinguished from the courts that entertain jurisdiction of other matters * * * matters pertaining to probate are referred to what is called 'Probate procedure' as distinguished from what is denominated 'Civil' or 'Criminal' procedure, but when the court sitting in a probate proceeding discovers in a petition a statement of facts which forms the basis of a controversy, we see no reason why it may not settle the issues thereunder, when an appearance has been made thereto, and then proceed to try it in a proper manner *as any other civil cause*."

Filley vs. Murphy, 30 Wash., 1, 5.

"It is not a law court, nor an equity court, nor a Probate Court, but it is all the time the Superior Court of general jurisdiction, empowered to try *all these differently termed causes under the title of a civil action*, and when it has once acquired jurisdiction *of that civil action*, it may proceed, in an orderly way, to determine equitable, legal or probate controversies."

Browder vs. Phinney, 30 Wash. 74.

"*Proceedings to contest a will are in their nature equitable* and trial by jury of issues of fact therein is not a matter of right."

Clayson vs. Clayson, 26 Wash., 253.

It appears, therefore, that the constitution of the State, Section 6, Article IV, vested the Superior Court with original jurisdiction in all cases in equity, and in all cases at law in which the title or possession of real property was involved, and also of all matters of probate.

In the case of Reformed Presbyterian Church vs. Mc Millan, 31 Wash., 643, the question presented to the Supreme Court of the state was whether the Superior Court in a probate proceeding had jurisdiction to determine the beneficiary under a will. The Supreme Court held that even assuming that no such jurisdiction existed by reason of it being a matter of probate, yet, in a matter of probate, the Superior Court exercised its constitutional jurisdiction as a Court of general jurisdiction, and that a statute could not take away the power vested in the Superior Court by the constitution.

Counsel for the respondent have likewise erroneously assumed that the sole object of the bill in this suit was to have an alleged noncupative will annulled and

its probate revoked, and their argument is that as such relief can only be given by the Superior Court of the State in its exercise of probate jurisdiction, a Circuit Court of the United States in the State of Washington is without jurisdiction as a Federal Court.

A reference to the bill will show that the jurisdiction of the Circuit Court was invoked upon much broader ground than that assumed by counsel for respondent. The bill specifically alleged that under the law of the State of Washington, a nuncupative will, where the estate bequeathed exceeded the value of two hundred dollars, was invalid, and that even if valid, it could not convey real estate.

Bill, paragraphs 18-20. Record pages 15-16.

The bill set out the alleged nuncupative will, purporting on its fact to dispose of "Property and personal effects worth many thousands of dollars" and alleged that the real estate in Seattle of which the deceased died seized exceeded the value of three hundred thousand dollars.

Record, pages 12-13-15.

The bill also set out the petition of the respondent Carrau for the probate of the alleged will, in which she stated that:

"The testamentary words were thereafter reduced to writing which writing accompanies this petition * * * that the decedent was a bachelor and left no widow, heirs, or next of kin, so far as known to your petitioner; that the decedent left personal property of the value of fifty thousand dollars and real estate in said county of King, of the probable value of four hundred thousand dollars. Wherefore petitioner prays that said will be admitted to probate."

Record, page 13.

The bill specifically prayed:

"That the said pretended nuncupative will * * * be adjudged null and void and of no force and effect whatsoever, and in the event that said will should *not be adjudged null and void* the same should be adjudged *not to pass title to any real estate of the estate of John Sullivan, deceased*, nor any of the rents, issues and profits *issuing out of said real estate since the death of said John Sullivan, deceased.*"

Record, page 19.

The bill therefore states facts clearly showing, that, even assuming that the decree of probate rendered without jurisdiction and procured by fraud, conclusively established the execution of the alleged nuncupative will, still the title to the real estate of which the deceased died seized, passed upon his death to the petitioners, for the following reasons:

1st. Because the alleged will was invalid, in that it undertook to bequeath an estate exceeding in value two hundred dollars.

2nd. Because, if valid, it could not convey real estate.

The facts alleged in the bill therefore invoked the jurisdiction of the Circuit Court of the United States to construe the alleged will and determine, 1st, its validity, 2nd, if valid, whether or not real estate was conveyed by it.

There has never been any doubt that the construction of wills is a matter over which either a court of equity or a court of law has jurisdiction. There has never been any doubt that the construction of wills is not a matter of probate jurisdiction, although a Probate Court may by statute be vested with jurisdiction to construe wills.

The jurisdiction to construe a will was therefore a matter of which the Circuit Courts of the United States were by the constitution and laws of the United States vested with jurisdiction. A state statute expressly providing that a Probate Court should have sole and exclusive jurisdiction to construe wills could not deprive the Circuit Courts of the United States of the jurisdiction to construe wills vested in them by the constitution and laws of the United States.

The authorities upon this point are plain.

"It seems to be contended that after a will has been admitted to probate by the tribunal appointed for that purpose, its validity is no longer open to question, except by appeal from the decree of the court of probate, and hence that the court of common pleas has no jurisdiction to consider or determine the main question raised by this case, to-wit, whether Penelope Coghlan died intestate as to the Dougherty lot. This position cannot be sustained. The admission of a will to probate, either in common or solemn form, does not preclude inquiry into the validity of one or more of the provisions therein contained or of their proper construction or legal effect. It simply establishes the fact that a will has been made according to the form prescribed by the statute."

Burkett vs. Whittemore, 15 Southeastern Reporter, 616, 36S C. 428.

"The Probate court has the power, upon proper proceedings, to make a decree of distribution * * * but it has no power in this state to construe a will—to determine its effect upon the distribution of the estate—or to adjudicate between the heirs and the residuary legatees. Such power is given to Probate courts in some states, but in our system it is reserved to the law and equity courts * * *. In this case there is a question

whether the school district can take under the will, and whether, if they can take, they have not, by their action, rejected the legacy. This is a question between the school district and the heirs which can be determined only by the court of equity or law jurisdiction upon proper pleadings, notice and hearing. Not even the Supreme court of probate upon appeal can exercise the equity powers conferred upon the Supreme judicial court."

Hanscom vs. Marston, 19 Atlantic 460, 82 Me. 288.

"The legal effect of the will, or its various provisions, its construction and operation, do not come in question and cannot be passed upon on an application to admit the will to probate. The Probate court does not assume to determine the validity of a will, but only that the instrument presented for probate was executed as his last will and testament by the testator, in the manner prescribed by statute, and that he was legally competent to make a will."

Graham vs. Birch, 49 Northwestern 699, 47 Minn. 171.

"If the will be properly executed and proved, it must be admitted to probate, although it contain not a single provision capable of execution or valid under the law. Hence the probate does not establish the validity of any of its provisions. This is to be determined by the courts of construction when any question arises requiring their interposition."

1 Woerner Adm'n. Sec. 228, page 502.

"The power to determine directly and conclusively the construction to be given to wills is not committed to the court of probate, nor to the Superior court sitting as an appellate court of probate. Such a power involves the right to try and finally determine disputed titles to

property, real and personal, and this is not given to those courts."

In re Chapman's Estate, 39 Atlantic 734, 70 Conn. 363.

"In the second petition, the question presented to the Probate court was whether or not the property therein specified was, for the purpose of its distribution under the will, real estate or personal property, as under the terms of the will it was to be distributed differently, according to which of the above classes of property it belonged, but the determination of this question was also within the domain of equity jurisdiction. The inquiry whether or not this was to be deemed real estate or personal property, for the purpose of distribution, according to the provisions of the will, should be addressed to a court of chancery.

To authorize the Probate court, therefore, to entertain both or either of the foregoing petitions, required the possession by it of chancery powers. It must be a court of equity. Is it such a court? The answer to this question depends upon the proper construction of the law of congress, or what is generally known as the Organic Act instituting this court. The following is the provision of this Act, so far as it relates to the jurisdiction of the Probate court: 'The Probate courts of the Territory of Montana in their respective counties, in addition to their probate jurisdiction, are authorized to hear and determine civil causes * * * but they shall not have jurisdiction of any matter in controversy when the title or right to the peaceable possession of land may be in dispute, or of chancery or divorce cases * * *.' Another provision common to all the territories reads as follows: 'The Supreme court and the District courts respectively of every territory shall possess chancery as well as common law jurisdiction.' * * * By probate jurisdiction, in Section 1932, is meant the exercise of the ordinary power of what, *ex vi termini*, is generally understood to be the authority of courts of that name. They derive

their origin from the ecclesiastical courts of England, and this fact suggests the character of their powers. * * * Although they do not proceed according to the rules of the common law of England and this country, yet they are recognized by it and their jurisdiction is well defined and understood, as is that of our other courts of law and equity. Their powers are limited unless extended by statute, and are confined to the establishment of wills, the settlement and management, or, in other words, administration of decedents' estates, the supervising of the guardianship of infants, the control of their property, the allotment of dower, and other powers pertaining to the same general subject. This is the character of powers recognized by the term 'probate jurisdiction' as used in the foregoing Act of Congress. (Ferris vs. Higley, 20 Wall 375) * * * We think that the above provisions of the acts of congress, one of which expressly confers chancery jurisdiction upon the Supreme and District Courts, and the other of which prohibits its exercise by the Probate courts, leave no doubt as to where the only right to exercise such jurisdiction exists, namely, in the Supreme and District courts of the territory."

Chadwick vs. Chadwick, 13 Pacific 385, 6 Mont. 566.

"The next position of counsel for defendant is that the probate of the will is conclusive, and therefore the will itself must be regarded as valid until it, or the probate thereof, be set aside by proper proceedings. The premise of this proposition is correct, but the conclusion is not admissible. The probate of the will under the statute in force at the time had the effect to establish its execution and render it admissible as an instrument of evidence in the courts of the state and nothing more. (Code 1851, Sections 1297-1300.) It did not establish the testamentary character of the instrument and give validity to a title based upon it. The effect of the will and its interpretation whereon titles under it rested were not determined in the proceedings for its probate. These were

matters for adjudication when rights and property were claimed under the will."

Fallon vs. Chidester, 46 Ia. 588.

"It is clear that the Probate court was incompetent to grant the objects of the petition * * *. The court was asked, in effect, to determine the rights of the parties claiming under the will and not merely to determine whether it was an instrument made and published under such circumstances and with such legal forms as to constitute it the last will and testament of the testator and to entitle it to probate as such * * *. It obviously had no jurisdiction to declare that a will which was executed with all due legal solemnities was insufficient to pass title to parties to whom bequests were made in it. That was a question of construction of the contents of the will and not of the sufficiency of its execution and publication. The latter being established, it was not for that court to say whether any title passed to the parties claiming under its provisions."

Lusk vs. Lewis, 32 Miss. 297.

In *Ware vs. Wisner,* 50 Federal Reporter, 310, a bill in equity was brought to quiet the title of the complainants to certain land in Iowa. One Gage had acquired title to the land by patent. He made a will, leaving his property to certain of his children. After making his will another child was born to him. The question presented was the validity of the will. The opinion of the court was rendered by Judge McCrary, who said:

"My conclusions in this case are as follows: (1) The validty of the will under which the respondent claims title must be determined according to the laws of Iowa, where the land is situated * * * By the law of Iowa,

as interpreted by the Supreme court of the state, the will was revoked by the birth of an heir after it was executed * * *. The probate of the will in Iowa, while it settled the question of its due execution, does not conclusively establish its validity or determine its force and effect when title to real estate is claimed under it * * *. It follows that as to the land in controversy there is no valid will and the same is to be disposed of according to the Iowa law of descent."

The statute of Washington is very similar to the statute of Iowa:

"Every person who shall have attained the age of majority, of sound mind, may by last will divise all his or her estate, real and personal."

Pierce's Code, Sec. 2340.
Ballinger's Code, Sec. 4594.

"Every will shall be in writing, signed by the testator or testatrix or by some other person under his or her direction in his presence, and shall be attested by two or more competent witnesses subscribing their names to the will in the presence of the testator."

Pierce's Code, Sec. 2341.
Ballinger's Code, Sec. 4595.

"Every will proved according to the provisions of this chapter, recorded and certified by the judge of the Superior court and attested by the seal of said court, may be read as evidence without any further proof."

Pierce's Code, Sec. 2392.
Ballinger's Code, Sec. 6107.

"The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the clerk in whose custody the same may be, shall be received as evidence and shall be as effectual in all cases as the original would be if produced and proven."

Pierce's Code, Sec. 2393.
Ballinger's Code, Sec. 6108.

In the language of the Supreme court of Iowa, in Fallon vs. Chidester, 46 Iowa, 588-591:

"The probate of the will under the statute in force at the time had the effect to establish its execution and render it admissible as an instrument of evidence in the courts of the state and nothing more * * *. It did not establish the testamentary character of the instrument and give validity to a title based upon it. The effect of the will and its interpretation whereon titles under it rested were not determined in the proceedings for its probate."

The courts of the United States have repeatedly exercised their jurisdiction, either on the law side, or in equity, to construe wills and determine the rights of parties thereunder. If the construction of the will was presented to the court in an action of ejectment, then the law court would construe the will and determine whether the title of the deceased passed to his heir by operation of law or vested in the devisee claiming under the will. If the case presented to the court was one where there was no adequate remedy at law in the courts of the United States, then those courts would exercise jurisdiction in equity and construe the will.

Hardenbergh vs. Ray, 151 U. S. 112.
Potter vs. Couch, 141 U. S. 296.

Coulton vs. Coulton, 127 U. S. 300.
Jones vs. Habersham, 107 U. S. 174.
Sherman vs. American Congregational Association, 113 Federal 609.
Waterfield vs. Rice, 111 Federal 625.
Handly vs. Palmer, 103 Federal 39.
McDuffy vs. Montgomery, 128 Federal 105.

The construction of a will being a matter over which courts of equity and law both exercise jurisdiction, it was by the constitution of the state vested in the Superior court in the exercise of jurisdiction in equity and law. It was not vested in the Superior court by virtue of the grant to the Superior court of jurisdiction "in matters of probate." It is clear, therefore, that in determining the validity of the alleged will, and if valid, whether real estate passed under it, the suit, if petitioners had instituted one in the state court, would have been entertained by the state court under its jurisdiction over matters of law and equity, and not by the Superior court in the exercise of jurisdiction over matters of probate.

If, therefore, the respondent Carrau had been in possession of the property, and petitioners had instituted in the Circuit Court of the United States a suit in ejectment, the jurisdiction of the Circuit Court of the United States as a court of law would have been beyond question, and in that suit the Circuit Court of the United States would have had presented to it and have determined, the validity of the will, and if held valid, whether the title and right to possession of the real estate was in the petitioners as heirs at law of the deceased or whether it was in the respondent Carrau by reason of the will. The respondent Carrau, however, was not in possession of any of the property. An action of ejectment therefore could not be maintained against her, nor could a court of law afford the

petitioners any relief. The only test of whether a Circuit court of the United States has jurisdiction in equity, as distinguished from jurisdiction at law, depends on whether the remedy at law is as complete and adequate as that which can be afforded by a court of equity. If it is not, then the court has jurisdiction in equity.

Rich vs. Braxton, 158 U. S. 378.
Gormley vs. Clark, 134 U. S. 338.
Allen vs. Hanks, 136 U. S. 301-310.
Tyler vs. Savage, 143 U. S. 79-95.
Kilbourne vs. Sunderland, 130 U. S. 505-514.
Boyce's Executors vs. Grundy, 3 Peters 210-215.
Walla Walla vs. Walla Walla Water Company, 172 U. S. 1-12.
Bardon vs. Land Company, 157 U. S. 330.
Smyth vs. Ames, 169 U. S. 516.
Sheffield Furnace Co. vs. Witherow, 149 U. S. 574-579.
Hudson vs. Randolph, 66 Federal, 217.
Waite vs. O'Neil, 72 Federal 356.

In McConihay vs. Wright, 121 U. S. 201, a suit was brought in the Circuit Court of the United States in equity to quiet the title of complainant to a tract of land in West Virginia. The West Virginia code allowed an action of ejectment to be maintained against one claiming title to or an interest in land, although not in possession. The jurisdiction of the Circuit Court of the United States, in equity, was objected to on the ground that the complainant had a plain and adequate remedy at law under the West Virginia statute. This court, considering the objection, said:

"Admitting this to be so, it nevertheless cannot have the effect to oust the jurisdiction in equity of courts of the United States as previously established."

Where the statute of a state authorizes a suit to quiet title to be maintained by one not in possession of land against another claiming title to the land, who is also out of possession, a Circuit Court of the United States in equity has jurisdiction of a suit to quiet the title. The right given by the state statute will be enforced by the Circuit Court of the United States, and as the defendant is not in possession of the land, and therefore ejectment would not lie, the remedy is in equity.

Dick vs. Foraker, 155 U. S. 404.
Roberts vs. Northern Pacific Railroad, 158 U. S. 30.
Wehrman vs. Conklin, 155 U. S. 324.
Missouri, K. T. & T. Co. vs. Krumseig, 172 U. S. 351.
Holland vs. Challen, 110 U. S. 19.
Whitehead vs. Shattuck, 138 U. S. 146.
Frost vs. Spitley, 121 U. S. 552.
Moore vs. Steinbach, 127 U. S. 70.
Reynolds vs. Crawfordsville Bank, 112 U. S. 405-410.
Harding vs. Guice, 80 Federal 162.
Southern Pacific vs. Stanley, 49 Federal 263-265.

The statute of the state of Washington authorizes a suit to quiet title to real estate to be maintained by one not in possession of real estate against another also out of possession of real estate, but who asserts title thereto, even though the title asserted be void.

Kinsman vs. Spokane, 20 Wash. 119.
Rohrer vs. Snyder, 29 Wash, 199-203.
Jackson vs. Tatebo, 3 Wash. 456-462.
Bloomingdale vs. Weil, 29 Wash. 611, 634.

The respondent Carrau not being in possession of the real estate, but claiming title thereto under the nuncupa-

tive will and the decree of probate, could have been proceeded against by the petitioners by a suit in the state court to quiet their title to the land. It could not possibly be contended that the Superior court of the state, vested with complete equity jurisdiction, would have entertained such suit by virtue of the grant to it of jurisdiction over matters of probate. In such suit, the determination of the validity of the will would necessarily be drawn in question and, if it should be determined to be valid, then the question would be presented whether real estate passed under it. This question would be one of construction purely, a question committed to the jurisdiction of a court of equity, where the suit was one to quiet title.

If a court of the state of Washington, exercising either law or equity jurisdiction, would have the right to entertain jurisdiction of a suit instituted by the petitioners against the respondent Carrau to quiet their title to the real estate of which the deceased died seized, as against the claim asserted to that real estate under the will, then that the Circuit Court of the United States would have concurrent jurisdiction is beyond question. A state statute could not divest the Circuit Court of the United States of such jurisdiction, even if it expressly so provided.

In considering the question of the right of a Circuit Court of the United States, where the requisite diversity of citizenship existed, to entertain jurisdiction of a suit involving the validity or construction of a will, Mr. Justice Field, in delivering the opinion in the case of Gaines vs. Fuentes, 92 U. S. 10-22, said:

"Whenever a controversy in a suit between such parties arises, respecting the validity or construction of a

will, or the enforcement of a decree admitting it to probate, there is no more reason why the Federal courts should not take jurisdiction of the case than there is that they should not take jurisdiction of any other controversy between the parties."

The bill squarely presented to the Circuit court the question whether the alleged will, assuming its execution to have been conclusively established by the decree of probate, was valid, and also, if valid, whether real estate passed under it to the respondent. The requisite diversity of citizenship existed. The respondent was not in possession of the property. If the bill prayed for more relief than the petitioners were entitled to, namely, if though stating facts sufficient to give the Circuit Court of the United States jurisdiction to determine the validity and to construe the will, it did not state facts which authorized the Circuit court to determine the validity of the decree of probate, and whether the alleged will had been executed, then the Circuit court should have declined, in the exercise of its jurisdiction, to grant the full relief prayed for, but the fact that the petitioners prayed for greater relief than the Circuit court was authorized to give them, surely afforded no ground for the Circuit court to deny jurisdiction over the suit.

Prior to 1895 the Supreme court of the state of Washington held that on the death of a person intestate, seized of real estate, his heir could not maintain a suit to establish his title to the real estate, either prior to administration upon the estate, or during the pendency of administration. In 1895 the legislature enacted a statute which provided as follows:

"Section 1. When a person dies seized of lands, tenements or hereditaments, or any right thereto, or entitled

to any interest therein * * * his title shall vest immediately in his heirs * * *. No decree of distribution or other finding or order of any court shall be necessary in any case to vest such title in the heirs * * *. But the same shall vest in the heirs * * * instantly upon the death of said decedent * * * the title and right to possession of such land * * * so vested in such heirs * * * together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs * * * excepting only the executor or administrator when appointed * * * and any one or more of such heirs * * * may sue for and recover their respective shares or interests in any such lands * * * and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not from any person except the executor or administrator."

Laws of Washington, 1895, page 197.

This statute came before the Supreme Court of Washington in the case of Griffin vs. Warburton, 23 Wash. 231, and the Supreme court construing the statute, said:

"Under the statute as it now exists, the heirs, upon the death of an ancestor, become vested at once with the full property * * * they have the right to possession against all the world except the right of the administrator."

"We have recently held that there is no necessity for a decree or order of distribution of a Probate court in order to pass title to the real property from the ancestor to the heir. That the rule as it formerly existed in this state, 'that the intervention of the Probate court and an adjudication and distribution thereunder are essential to the passing of the title of the ancestor to the heir, so perfected as to make it beneficial to him,' has been changed

by the Act of 1895. * * * It is expressly provided in that act not only that the estate vests in the heir instantly on the death of the ancestor, but that the heir may maintain an action, even if letters of administration have been granted, to recover his share or interest in the lands and the rents and profits thereof, against any person except the executor or administrator and those lawfully claiming under such executor or administrator."

Anrud vs. Scandinavian-American Bank, 27 Wash. 16-19.

The act of 1895 also provides that the title to real estate, if the deceased has left a will, shall vest in the devisee, but contains the following proviso: "Provided that no person shall be deemed a devisee until the will has been probated."

The title to the real estate of the deceased passed at his death instantly to his heirs, and the title to the personalty passed to the administrator, upon his qualification. Nearly six months after the death of the deceased, the respondent Carrau, by an *ex parte* proceeding, founded upon false testimony, obtained a decree, rendered without jurisdiction, probating the alleged nuncupative will, and thereafter claimed that that will passed the title of the entire estate to her. The statute above quoted expressly provided that no person should be deemed a devisee until the will was probated.

In the case of Basket vs. Hassell, 108 U. S. 267, the claim was set up that a certificate of deposit had been endorsed and delivered by a decedent to a person in such manner as to constitute it a good gift, *mortis causa*. This court held that it was not such a gift. A petition for rehearing was filed and the claim was made that if the transaction was not good as a gift, *mortis causa*, it

was nevertheless good as a will of personalty. This court answered that contention in the following language:

"But the conclusion is not justified by the assumption, for a will of personalty in Tennessee does not take effect until probated * * * and until probated and the appointment of an executor or administrator *cum testamento annexo*, the title to the fund passes to the administrator appointed previously, as in case of intestacy, to whom the decree in this case awarded it."

In the case at bar, the respondent Carrau sought to divest the petitioners, as heirs-at-law and next of kin of the deceased, of their title to the real estate, by virtue of the alleged will, and also sought to divest the administrator, previously appointed, of his title to the personalty. Whether she had done so or not was a question which the Circuit Court of the United States, sitting in equity, had a right to determine.

The decree of probate, though void, was fair on its face, and the Supreme Court of the State held, concerning this very estate, in the case of State, ex rel. Stratton vs. Tallman, 25 Wash. 295, that the decree of probate could not be set aside on motion, but that it could be set aside in a suit brought to contest the will, saying:

"The Superior Court entertaining such suit may fully protect such rights in the estate by such stay of proceedings in the procedure in probate as may be necessary or effective."

That a decree of probate, rendered without jurisdiction, obtained by fraud and founded upon false testimony,

can be inquired into by a Superior Court of the State, exercising jurisdiction either at law or in equity, is settled under the decisions of the State of Washington.

That the decree in the case at bar was void is settled by the authorities.

Smith v. White, 32 Wash. 474

Ball v. Clothier, 75 Pac. 1099, 34 Wash. —.
In re Leonard's Will, 65 N. J. L. 167.
Randolph vs. Bayne, 44 Cal. 370.
Charlebois vs. Bourdon, 6 Mont. 373.
Lewis vs. Bishop, 19 Wash. 312.
Northcut vs. Lemery, 8 Ore. 317, 323.
Hunsaker vs. Coffin, 2 Ore. 107.
Joiner vs. Delta Bank, 71 Miss. 382.
Fernekes vs. Case, 75 Ia. 152.
Melbourn vs. Fouts, 4 Ia. 346.
Hodges vs. Brett, 4 Ia. 345.
Sprole vs. Marshall, 4 Ia. 344.
Jones & Mayce Co. vs. Boggs, 63 Ia. 589.
Boales vs. Shules, 29 Ia. 507.
Haws vs. Clark, 37 Ia. 356.

The law governing nuncupative wills remains the same now as it was when Washington was a territory.

The legislature of the Territory of Washington, at its first session, held in the year 1854, enacted two statutes, one of which was entitled:

"An Act Establishing Probate Courts for the Territory of Washington."

Laws of 1854, Territory of Washington, page 309.

Another entitled

"An Act Relating to Wills."

Laws of 1854, page 312.

Section 23 of the latter Act provided:

"No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, nor unless the same be proved by two witnesses * * *."

This law has never been changed by any act of the territory or of the state, legally enacted.

The organic act of the Territory of Washington (U. S. Statutes at Large, Vol. X, pages 172-174), by Section VI, provided that every law enacted by the territorial legislature "shall embrace but one object and that shall be expressed in the title." The territorial legislature, by an Act thereafter enacted and entitled "An Act Defining the Jurisdiction and Practice in the Probate Courts of Washington Territory" (Pierce's Code of Washington, page 358), re-enacted Section 23 of the Act of 1854 and dropped the word "nor" after the word "dollars" and before the word "unless" and thereby made the section read as follows:

"No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars (nor) unless the same be proved by two witnesses * * *."

It is perfectly plain that a law entitled "An Act Defining the Jurisdiction and Practice in the Probate Courts of Washington Territory" could not, by the most liberal construction, be understood as repealing a limitation placed by law on the amount of an estate which might be bequeathed by nuncupative will, imposed by a section of an act entitled "An Act Relating to Wills." All statutes thereafter enacted by the legislature of the Territory of

Washington omitting the limitation upon estates which might be bequeathed by nuncupative wills, being entitled "An Act Defining the Jurisdiction and Practice in the Probate Courts of Washington Territory," were in conflict with the provisions of Section VI of the Organic Act and therefore void. Upon this point we respectfully refer the court to pages 26 to 32, both inclusive, of our opening brief upon the application for the writ of *certiorari*.

The Circuit Court of the United States certainly had power to determine whether an act of the territory of Washington, entitled "An Act Defining the Jurisdiction and Practice in the Probate Courts of Washington Territory" was void as being in conflict with Section VI of the Organic Act of the territory, in so far as it attempted to repeal a provision of a former act of the territory entitled "An Act Relating to Wills."

It is moreover clear that even if it should be assumed not only that the alleged will was valid, but that it was duly probated, it could not convey, under the laws of Washington, real estate.

There is no statute, either of the Territory or of the State of Washington, creating the right to make a nuncupative will. The question presented therefore is entirely different from what it would be if there were a statute of the state creating the right to dispose of an estate by nuncupative will. The law of Washington, from the earliest territorial days, adopted the common law. The statute adopting the common law is as follows:

"The common law, so far as it is not inconsistent with the constitution and laws of the United States or of the State of Washington, nor incompatible with the institutions and condition of society in this state, shall be the

rule of decision in all the courts of this state." (Pierce's Code, Sec. 249; Ballinger's Code, Sec. 4783.) Laws 1856, p. 7.

This same provision existed in territorial days. The territorial legislature, instead of creating the right to made a nuncupative will, recognized the right to make a nuncupative will as existing at common law, but saw fit to limit the amount of the estate which might be bequeathed, and to impose restrictions upon the execution and the proof of such wills. The language of the statute is not that a person shall have the right to dispose of his estate by nuncupative will. The language is "No nuncupative will shall be good when the estate *bequeathed* exceeds," etc. At common law, land could not be devised. The disability of the common law was partially removed by statute 32, Henry VIII. Prior to the statute of Henry VIII, personal property could be disposed of by a nuncupative will. Real estate could not be disposed of by any kind of will. The statute XXXII of Henry VIII, while allowing real estate to be devised, required the will to be in writing. Nuncupative wills remained as before the statute. The Statute of Charles II imposed stringent restrictions upon nuncupative wills. The Statute of Washington imposed additional restrictions upon nuncupative wills, and provided that nuncupative wills should not be good where the estate bequeathed exceeded two hundred dollars in value. That the legislature of the Territory, when imposing upon the right to make nuncupative wills greater restrictions than were imposed by the Statute of Charles II, intended to change the common law so that such wills could dispose of real estate, is a proposition to sustain which no possible reason can be assigned. The matter, however, is placed beyond all possible doubt, because the legislature, by Section 24 of the act, in dealing

with seamen at sea and soldiers in military service as a favored class, and while exempting them from the provisions of Section 23, expressly provided:

"Any mariner at sea or soldier in the military service may dispose of his wages or other personal property, as he might have done by the common law or by reducing the same to writing."

The contention of counsel for respondent that the legislature, by an act imposing greater restrictions upon the right to make nuncupative wills than were imposed by the Statute of Charles II, and while exempting mariners at sea and soldiers in the military service from its operation so far as wages and personal property were concerned, conferred upon the unfavored class the power to devise real estate, by declaring "No nuncupative will shall be good when the estate *bequeathed* shall exceed," etc., is manifestly unsound. Not only, however, did the legislature in the section of the act relating to nuncupative wills use the word "bequeathed," but in the sections of the act not relating to nuncupative wills, whenever dealing with the subject of lands passing by will, used the word "devise." Unless the object of language is to conceal instead of express thought, the legislature, in dealing with bequests under nuncupative wills, referred to personal property, for, when it dealt with wills relating to lands, it advisedly used the word "devise." From the language of the statute alone the matter is not even open to doubt, but in the light of the authorities there is no room for controversy.

That a nuncupative will cannot convey real estate is conclusively settled by an unbroken line of authorities. line of authorities.

In the case of

In re Davis Will, 79 N. W. 761 (103 Wis. 455)

the Supreme Court of Wisconsin had before it for construction a nuncupative will in the following language:

"I give unto my wife the income of my entire estate during her widowhood. If she shall remarry, she is to have one-third of my estate, and the other two-thirds is to go to my children. Upon the death of my wife, my whole estate is then to go to my children. I appoint my brother Oscar F. Davis my executor."

The Court said:

"The only question for consideration is whether the words so spoken, and constituting the nuncupative will of the deceased, were effectual to pass the income of the real estate to the widow. * * * All wills, except nuncupative wills, must be in writing, and executed as prescribed. * * * And the statute further declares that 'no nuncupative will shall be good when the estate bequeathed shall exceed the value of $150 that is not proved,' as therein prescribed. * * * The word 'bequeathed' is commonly used with reference to the disposition of personal property; and the word 'devise' with reference to the disposition of real property.* * * We must hold that under our statutes a nuncupative will is inoperative to transfer title to real estate. This is in accordance with the rulings of other courts under similar statutes."

To the same effect are the following authorities:

Sadler v. Sadler, 60 Miss. 251.
McLeod v. Dell, 9 Fla. 451.

Smithdeal v. Smith, 64 N. C. 52.
Palmer v. Palmer, 2 Dana 390.
Page v. Page, 2 Rob. (Va.) 424.
Lewis v. Aylott, 45 Tex. 190.
Pierce v. Pierce, 46 Ind. 86.
Schouler on the Law of Wills, Sec. 362.
Moffett v. Moffett, 67 Texas 642.

II.

It is contended by Counsel for the respondent Marie Carrau that the Circuit Court of the United States had no jurisdiction as a federal court because it appeared that one Eugene Timothy Sullivan claimed to be the sole heir of the deceased John Sullivan; that Eugene Timothy Sullivan was a citizen of the State of Washington and Marie Carrau was a citizen of the State of Washington; that Eugene Timothy Sullivan was an indispensable party to this suit and that if made a party he would be a party plaintiff, and therefore the suit would have a citizen of the State of Washington as party plaintiff and a citizen of the State of Washington as party defendant, and such joinder would oust the Circuit Court of jurisdiction.

The contention, in view of the pleadings and the record in this suit, is certainly novel.

The bill in this suit was filed on the 20th of June, 1901. The parties to that bill were the petitioners, as complainants, who were subjects of the King of Great Britain and Ireland. The defendants were two citizens of the United States and of the State of Washington. The jurisdiction of the Circuit Court of the United States attached on that date. Eugene Timothy Sullivan filed no claim until the 23rd day of August, 1901. (See Carrau's Plea in Abatement, record pages 35 and 36.)

The proposition is elementary that if the jurisdiction of the Circuit Court has attached it will not be divested by reason of a transfer of interest to a person who could not have originally instituted the suit in the Circuit Court. It is also elementary that a person not possessing the requisite citizenship cannot oust the Circuit Court of its jurisdiction, which previously attached, by intervening in the suit.

Hardenberg vs. Ray, 151 U. S. 112.

Therefore, so far as Eugene Timothy Sullivan is concerned, if the Circuit Court of the United States acquired jurisdiction of this suit on the 20th day of June, 1901, it could not be divested of that jurisdiction by Eugene Timothy Sullivan filing a claim as heir of the deceased in the Superior Court of the State of Washington. It might just as well be claimed that if Marie Carrau had been in possession of the real estate and the petitioners had instituted an action of ejectment against her in the Circuit Court of the United States, Eugene Timonthy Sullivan could have ousted the Circuit Court of jurisdiction by instituting an action of ejectment against her in the state court. If, however, it should be claimed that there were other persons, aliens, who also claimed to be heirs of the deceased and that those persons could not be joined as defendants without ousting the Circuit Court of jurisdiction, it is a sufficient answer that those persons were not within the jurisdiction of the Circuit Court and that they were not indispensable parties, and furthermore that the petitioners and respondent both claim that they have no interest in the estate.

By a reference to the pleadings it will be found that the respondent Carrau admitted that there were no persons nearer of kin to the deceased than first cousins. If,

therefore, the petitioners established that they were first cousins of the deceased, they were entitled to recover their shares in the estate. The admission of the respondent Marie Carrau appears at page 65 of the record. An examination of the answer of Marie Carrau will, however, fail to disclose that she pleaded a non-joinder of either necessary or proper parties. She did not allege that the deceased left any heirs. She merely pleaded that certain persons had *filed* claims in the state court. If a suit in ejectment had been instituted against her it certainly could not be contended that she could defeat the jurisdiction of the Circuit Court of the United States by showing that persons, whose citizenship would have deprived the Circuit Court of the United States of jurisdiction if made parties, had instituted ejectment suits against her in the state court. Not only, however, did she not plead that there was a non-joinder of indispensable parties, but she endeavored to prove that complainants were not relatives of the deceased, because she claimed that the deceased left no relatives. Her claim, therefore, is that because certain persons had filed claims in the state court alleging that they were the only heirs of the deceased, and that both the petitioners and herself contended that the persons filing such claims had no interest in the estate, the fact of the filing of the claims divested the Circuit Court of jurisdiction to determine the controversy before it where the parties on one side were aliens and on the other citizens of the United States.

It is certainly a novel proposition that a person whom all parties to a suit say has no interest in the property, is such an indispensable party to a suit to determine the title to that property that no decree can be rendered in the suit without his joinder, and yet if joined his joinder will divest the court of jurisdiction as between parties

claiming the property between whom the requisite diversity of citizenship does exist.

The bill disclosed a case within the jurisdiction of the Circuit Court of the United States because it showed a controversy over property having the money value required by law, and that the parties to the suit possessed the requisite diversity of citizenship.

If it was the intention of Marie Carrau to divest the Circuit Court of the United States of the jurisdiction which had attached, by showing that parties, whose citizenship, if such parties were joined, would oust the Circuit Court of jurisdiction, were indispensable parties, it was incumbent upon her not only to plead that fact but to prove it.

To her answer the petitioners filed a general replication. Evidence was taken in the suit. The petitioners offered evidence which proved that they were the only first cousins, heirs at law and next of kin of the deceased. The respondent Carrau admitted by her answer that there were no persons nearer of kin to the deceased than first cousins. She introduced evidence for the purpose of establishing that the petitioners were not related to the deceased because he died without relatives. We submit, therefore, that there is no foundation for the claim that there were any persons who should have been joined as parties other than those who were before the court.

The authorities sustain the proposition that all of the necessary parties to the suit were before the court:

Authorities, pp. 36-38 of Opening Brief.

CONCLUSION.

Finally, we confidently submit that at this day there is no reasonable doubt of the soundness of the following propositions:

1. That where the amount involved is sufficient for jurisdictional purposes and the requisite diversity of citizenship exists, a Circuit Court of the United States has jurisdiction in equity to enjoin one from asserting and enforcing a decree of a State Court obtained by fraud and rendered without jurisdiction, where there is no adequate remedy at law.

Howard vs. Cordova, 177 U. S. 609.
Cooper vs. Newell, 173 U. S. 155.
Huntington vs. Laidley, 176 U. S. 668.
Marshall vs. Holmes, 141 U. S. 590.
Arrowsmith vs. Gleason, 129 U. S. 86.
National Surety Co. vs. State Bank, 120 Fed. 593 (C. C. A., 8th Cir.)
McNeil vs. McNeil, 78 Fed. 834.
Gravet vs. Faurot, 76 Fed. 257.

2. That while the probate of a will *ex parte* is a proceeding *in rem* over which a Circuit Court of the United States does not exercise jurisdiction, yet when a State Court of general jurisdiction has jurisdiction by a proceeding *inter partes* to annul a will and its probate, a Circuit Court of the United States in such State has jurisdiction at law or in equity, as the nature of the case may require, to give the same relief, when the amount involved is sufficient and the requisite diversity of citizenship exists.

Richardson vs. Green, 159 U. S. 264.
Richardson vs. Green, 61 Fed. 423.

Crabbe vs. Williams, 187 U. S. 645.
Williams vs. Crabbe, 117 Fed. 193.
Wart vs. Wart, 117 Fed. 766.
Sawyer vs. White, 122 Fed.223.
Kieley vs. McGlynn (Broderick's Will), 21 Wall. 503.
Ellis vs. Davis, 109 U. S. 485.
Gaines vs. Fuentes, 92 U. S. 10.
Byers vs. McAuley, 149 U. S. 608.
McDonald vs. Jordan, 178 U. S. 229.
Everhart vs. Everhart, 34 Fed. 82.
Broadhead vs. Shoemaker, 44 Fed. 518.
Kirby vs. Railroad Co., 106 Fed. 551.

3. The Statute of Washington having given an equitable right to the heirs of a decedent to contest the will in a Superior Court of the State, exercising general equity jurisdiction, by a proceeding *inter partes*, and the Supreme Court of the State having decided that the suit to enforce such right is of an equitable nature, the Circuit Court of the United States for the District of Washington has jurisdiction to enforce the same right in this suit.

Clayson vs. Clayson, 26 Wash. 253.
State, ex rel. Stratton, vs. Tallman, 25 Wash. 295.
Higgins vs. Nethery, 30 Wash. 239.
Bower vs. Bower, 5 Wash. 225.
Mason vs. McLean, 6 Wash. 31.
Hill vs. Hill, 7 Wash. 408.
Purdy vs. Purdy, 13 Wash. 164.
Boman vs. Boman, 49 Fed. 329.
See authorities cited under last proposition, also authorities cited on pages 13, 14 and 15 of principal brief on application for *certiorari*.

Land Title Co. vs. Asphalt Co., 127 Fed. 1. (C. C. A., Third Cir.)

U. S. Ship Building Co. vs. Conklin et al., 126 Fed. 132. (C. C. A., Third Cir.)

Jones vs. Mutual Fidelity Co., 123 Fed. 506.

The Circuit Court of Appeals in this case denied these petitioners a decision in that court on the merits of the case for the sole reason that, in the opinion of the Circuit Court of Appeals, the Circuit Court of the United States had no jurisdiction, as a federal court, to entertain the suit.

In

U. S. vs. Jahn, 155 U. S. 109, this court said:

"It is conceded that the United States assigned errors on the merits as well as the error under consideration, and as the question of jurisdiction lay at the threshold, *and the intent of the act of March* 3, 1891, *was that that question should be determined by this court*, the Circuit Court of Appeals properly suspended any consideration of the case upon the merits until that question could be determined upon certificate."

The Circuit Court found that the alleged nuncupative will had never been made. It found that the parties claiming under it had sworn falsely when they obtained the order probating it. It found that the decree of probate was founded upon a citation issued at half past eleven o'clock on the 8th day of March, 1901, which required the heirs and next of kin of the deceased to appear at ten o'clock of the same day, an hour which had already passed at the time the citation was issued. It found that the citation was placed in the hands of the sheriff for service, and that he immediately returned it, stating that he could find no heirs or next of kin. It found that

the testimony of the witnesses, the claimant under the will and her sisters and brother-in-law, was immediately taken; that it had been written out in advance, and that the court immediately admitted the will to probate. It found that the petitioners were heirs at law and next of kin of the deceased, and held that they could not be disinherited of the property of which the deceased died seized, by any such proceeding.

It appears from the bill that the respondent Carrau was endeavoring to use this unconscionable decree of probate, founded upon fraud and rendered without jurisdiction, to obtain delivery to her of the entire estate. The bill charged that she was insolvent; that the estate was about to be delivered to her; that she would dispose of it, and that the petitioners would be compelled to resort to a multiplicity of suits. The bill charged that the delivery of the property to her, and the establishment of her status as a devisee under the will by the decree of probate rendered in the manner above set forth, would deprive the petitioners of their property without due process of law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

Certainly a court of equity was called upon to exercise its jurisdiction on this state of facts. The bill stated a matter within the jurisdiction of the Circuit Court of the United States as a federal court. The jurisdiction was exercised. The Circuit Court of Appeals, under what we most respectfully submit was a misapprehension of the law, held that the Circuit Court, as a federal court, was without jurisdiction, and directed the dismissal of the bill. The facts of the case certainly call upon this court to give relief. The law of the case, being as announced in U. S. vs. Jahn, 155 U. S. 109, that where

"the question of jurisdiction lay at the threshold (and) *the intent of the Act of March* 3, 1891, *was that that question should be determined by this court,"*

entitles these petitioners to the writ of *certiorari*, to have that question reviewed and determined here, if it should be held that an appeal does not lie from the decree of the Circuit Court of Appeals to this Court as a matter of right.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1904.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Complainants, Appellants,*

v.

TERENCE O'BRIEN as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Defendants, Appellees.*

No. 193

BRIEF OF APPELLANTS

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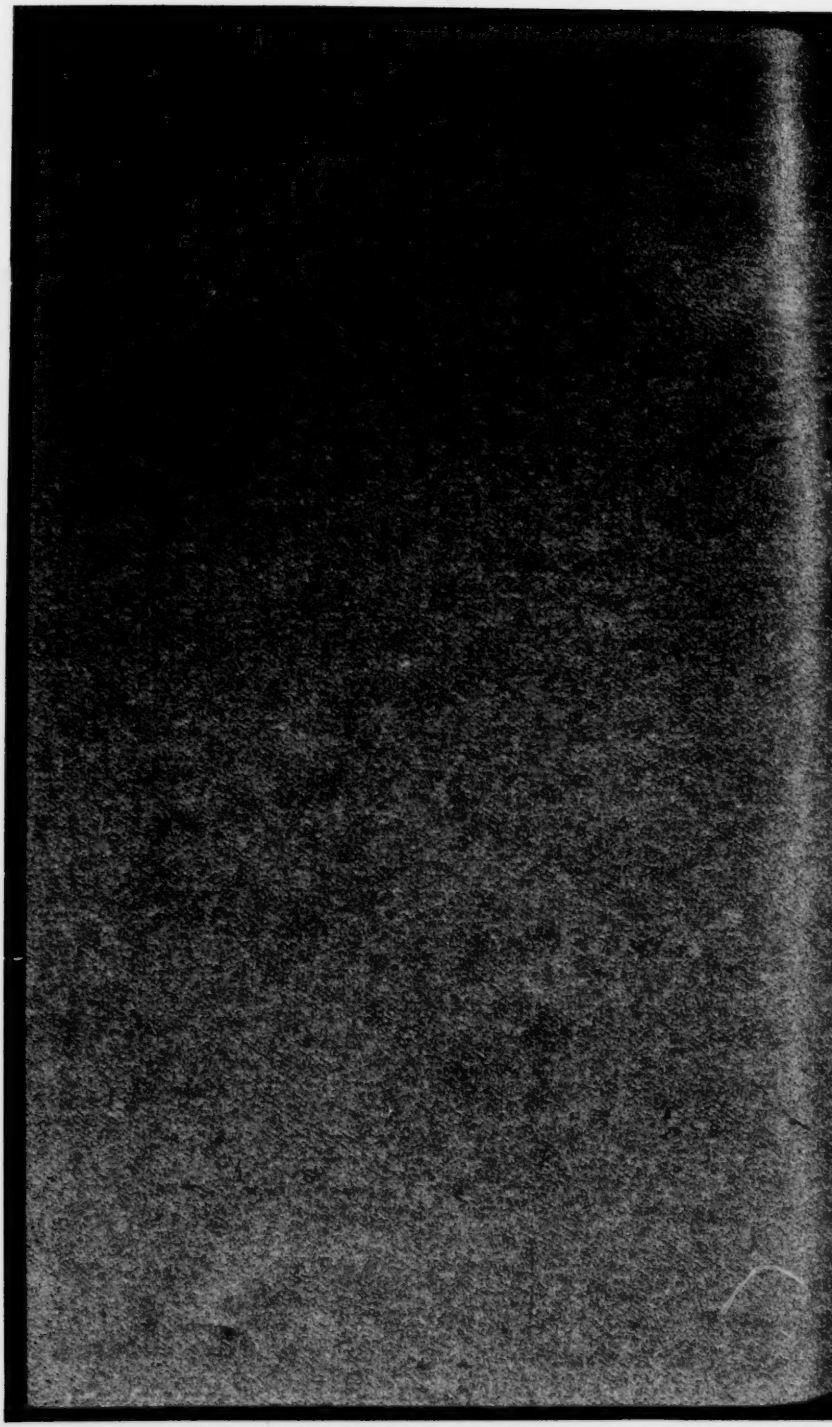

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APPEAL FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR NINTH CIRCUIT.

BRIEF OF COUNSEL FOR APPELLANTS

STATEMENT.

This suit is pending here on appeal from a decree of the United States Circuit Court of Appeals for the Ninth Circuit, which reversed the decree of the Circuit Court of the United States for the District of Washington, and directed that Court to dismiss complainants' bill for want of jurisdiction. It is also pending here upon the applica-

tion of the complainants for a writ of *certiorari* directed to the United States Circuit Court of Appeals for the Ninth Circuit, to review that decree in case this Court should hold that the decree of the United States Circuit Court of Appeals was final. A motion to dismiss the appeal was submitted to this Court in October last, and briefs were filed in support of and in opposition to the motion. Briefs were also filed in support of and in opposition to the application for the writ of *certiorari*. The Court took both motions under consideration and entered an order reserving its decision until after the case should be heard upon its merits.

The Circuit Court of Appeals, in reversing the decree of the Circuit Court, which had been rendered in favor of the complainants, and in directing the dismissal of the bill for want of jurisdiction of the Circuit Court over the subject matter of the suit, held: (826-846.)

1. That two British subjects, heirs at law and next of kin of an intestate who at the time of his death resided and who died in King County, Washington, leaving real and personal property there worth upwards of three hundred thousand dollars, could not maintain a suit in the Circuit Court of the United States for the District of Washington against the administrator of the estate of the deceased, a citizen of the United States residing in the State of Washington, for an accounting, and another citizen of the United States residing in the State of Washington, claiming the entire estate under an alleged nuncupative will of the deceased, probated by a decree of the Superior Court of the State of Washington for King County, regu-

lar upon its face, void in fact, obtained by fraud and rendered without jurisdiction, to enjoin the claimant under the pretended will and the pretended decree of probate from obtaining possession of the entire estate under an order of the Superior Court which she applied for and which the Superior Court, unless she were restrained from prosecuting her application, would grant, requiring the administrator to surrender to her the property of the complainants held by him in trust for complainants, and which action the bill specifically alleged would:

"DEPRIVE YOUR ORATORS AND EACH OF THEM OF THEIR SAID PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION OF THE RIGHTS OF YOUR ORATORS AND EACH OF THEM UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES." (4-11.)

2. That the Circuit Court of the United States for the District of Washington had no jurisdiction of the subject matter of such a suit by such heirs and next of kin, against the administrator and such claimant, to construe the alleged nuncupative will and determine it invalid on its face, although the bill alleged that under the law of the State of Washington a nuncupative will was invalid where the estate bequeathed exceeded the sum of two hundred dollars.

3. That the Circuit Court of the United States for the District of Washington had no jurisdiction of such suit between such parties, to construe the alleged nuncupative will and decree that real estate was not conveyed by it.

4. That even if the Circuit Court of the United States for the District of Washington had jurisdiction of any one of the foregoing controversies, the fact that the claimant under the alleged nuncupative will pleaded that persons other than complainants in this suit also claimed to be the only heirs and next of kin of the deceased, which persons could not be made parties by reason of their citizenship, deprived the Circuit Court of the United States for the District of Washington of jurisdiction to determine the controversies between the parties before the Court, although no decree could be entered affecting in any manner the rights of such absent claimants, and though all parties before the Court possessed the requisite diversity of citizenship and contended that the claims of the absent parties were without foundation in fact.

The decree of the Circuit Court adjudged: (131-133.)

1. That complainants are first cousins, heirs at law and next of kin of John Sullivan, deceased, late of the City of Seattle, State of Washington, and as such, entitled to share in his estate.

2. That the pretended nuncupative will claimed by the defendant, Marie Carrau, to have been made by said John Sullivan on the 25th of September, 1900, at about 11 o'clock P. M., in the following words, to-wit:

"I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick and we know not what might happen."

was never made by said John Sullivan, nor did the said John Sullivan speak said words or any of them, or any words of such import, nor did he make any will whatever.

3. "That the Superior Court of the State of Washington for King County, never acquired jurisdiction to probate said alleged nuncupative will. Said Court never made any lawful order for the issuance of a citation, nor was any lawful citation ever issued, nor was any notice of any proceeding to probate said alleged will ever given to or had by anyone, nor did said Court ever acquire jurisdiction to hear any evidence for the probate of said alleged will, but said Court acted wholly without jurisdiction in the matter of the probate of said alleged will, and the certificate of probate of said alleged will granted by said Court on the 8th day of March, 1901, and the decree of said Court purporting to have been rendered and entered on said 8th day of March, 1901, admitting said alleged will to probate as the last will and testament of said John Sullivan, deceased, were made and rendered wholly without jurisdiction, and said proceedings and all proceedings in the matter in said Superior Court numbered 3664, entitled, 'In the Matter of the Estate of John Sullivan, Deceased,' in so far as they relate to the alleged probate of said alleged nuncupative will, are null and void and of no force and effect."

4. That Terence O'Brien, as administrator of the estate of John Sullivan, deceased, is directed to recognize the right of each of complainants to share in said estate as a first cousin of said deceased and as one of the next of kin of said deceased John Sullivan.

5. "That the defendant Marie Carran, and all persons claiming under her or representing her in any manner whatever, are hereby perpetually restrained and enjoined from setting up or asserting in any manner whatsoever, any claim, right or title to or interest in the estate of said John Sullivan, deceased, or any part thereof, under said alleged nuncupative will and under the alleged pro-

bate thereof, or under either thereof, and from setting up, asserting or in any manner whatsoever making any claim whatsoever under said alleged nuncupative will, and under the alleged probate thereof, or either thereof, in any court or elsewhere, except in a court having appellate jurisdiction to review this decree."

The defendant, Marie Carrau, had in her answer denied that "*the vesting of said estate or the distribution of said property by said Superior Court to this defendant would be in violation of the rights of said complainants or either of them under the Fourteenth Amendment to the Constitution of the United States.*" (40.) She alone appealed from the decree of the Circuit Court to the United States Circuit Court of Appeals for the Ninth Circuit. In her assignments of error, the only error properly assigned by her was that the Circuit Court erred in not sustaining her motion to dismiss the bill for lack of jurisdiction which motion alleged:

"That the matters and things pleaded in said bill were exclusively subject to the jurisdiction of the probate court of the State, and not cognizable in the Federal Court." (16, 138.)

The other attempted assignments of error were too general to require their consideration by the Court of Appeals.

As stated, the Circuit Court of Appeals entered a decree reversing the decree of the Circuit Court for want of jurisdiction over the subject matter of the suit, and directing that Court to dismiss the bill.

The complainants prayed for and obtained the allow-

ance of an appeal from the decree of the Circuit Court of Appeals, on the ground that the decree of the Circuit Court of Appeals was not final, and that the amount involved was sufficient to authorize an appeal to this Court.

SPECIFICATIONS OF ERROR.

The decree of the Circuit Court of Appeals is erroneous in the particulars hereinafter set forth, and appellants rely for a reversal of that decree, upon the following specifications of error, to-wit: (849.)

1. The decree is erroneous in reversing the decree of the Circuit Court of the United States for the District of Washington, and directing said Circuit Court to dismiss the bill for want of jurisdiction, with costs.

2. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washington had no jurisdiction of the subject matter of the suit.

3. The decree is erroneous in adjudging that persons not before the Circuit Court were necessary parties, and if made parties their joinder would oust the Circuit Court of jurisdiction, and therefore, said Circuit Court could not acquire jurisdiction of said suit.

4. The decree is erroneous in adjudging that the subject matter of the suit was within the exclusive jurisdiction

of the Superior Court of the State of Washington for King County.

5. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washington, had no jurisdiction in equity of the subject matter of the suit.

6. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washington had no jurisdiction in equity of the suit for the annulment of a fraudulent nuncupative will and its probate, which was procured by fraud, although the amount involved was sufficient and the requisite diversity of citizenship existed to give said Circuit Court jurisdiction, and although an equitable proceeding could have been maintained by the same complainants against the same defendants in the courts of the State of Washington exercising general jurisdiction.

7. The organic act of Washington Territory, enacted by Congress and approved March 2nd, 1853, by section 6, provided that every law of the Territory "shall embrace but one object, and that shall be expressed in the title" The Territory, by the act of 1854, entitled "An act respecting wills," enacted that no nuncupative will shall be valid where the estate bequeathed exceeds two hundred dollars ($200.00), nor unless it be executed in a certain manner. The legislature of the Territory, in an act approved November 11, 1873, entitled, "An act defining the jurisdiction and practice in probate courts of Washington Territory," omitted the limitation on the amount of an estate which might be bequeathed by nuncupative will. The decree of

the United States Circuit Court of Appeals in this suit is erroneous in holding that the Circuit Court did not have jurisdiction to entertain a suit in equity to determine that the alleged nuncupative will was invalid because the said act of 1873 and all subsequent acts of said Territory having the same title, in so far as they attempted to repeal the provision of said act of 1854 imposing said limit, were void, because their titles were in conflict with said section 6 of said organic act.

8. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washing had no jurisdiction in equity where the requisite diversity of citizenship existed and the amount involved was sufficient, to entertain a suit to construe the alleged will and determine that real estate did not pass under it.

9. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washington had no jurisdiction in equity to enjoin the defendant administrator from distributing and his insolvent co-defendant from receiving, under an alleged nuncupative will, probated without jurisdiction, the entire estate of the deceased claimed by complainants as heirs at law and next of kin of the deceased, which distribution, if made, would create a cloud upon the title of complainants and deprive them of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

10. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of

Washington had no jurisdiction of a suit in equity to annul a pretended will and its fraudulent probate in a case where the requisite diversity of citizenship existed and the amount involved was sufficient for jurisdictional purposes, although by the law obtaining in the State of Washington, customary and statutory, an equitable proceeding *inter partes* might be maintained for the same purpose in the courts of the State exercising general jurisdiction.

11. The decree is erroneous in adjudging that it was within the power of the State of Washington to create an equitable right, enforceable by an equitable remedy *inter partes* in the courts of the State exercising general jurisdiction, but which could only be enforced in the courts of the State, although the requisite diversity of citizenship and the amount involved were sufficient to give the Circuit Court of the United States for the District of Washington jurisdiction.

12. The decree is erroneous in adjudging that the State of Washington has provided a right and remedy enforceable in the State courts only.

13. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washington had no jurisdiction of a suit by complainants, subjects of the King of Great Britain and Ireland, against citizens of the State of Washington, to enjoin the creation of a cloud upon the title of complainants' real estate and to prevent complainants' property from being disposed of to an insolvent under an alleged nuncupative will, probated by a decree founded upon false testimony and fraudulent evidence, by a court which never acquired jurisdiction.

14. The decree is erroneous in adjudging that the Circuit Court of the United States for the District of Washington had no jurisdiction of a suit in equity to prevent complainants being deprived of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, by defendants, under a false and fraudulent nuncupative will, probated by a decree rendered *ex parte*, procured by fraud, based solely on false evidence, and without jurisdiction in the court rendering such decree, but which decree showed jurisdiction upon its face.

15. The decree is erroneous in reversing the decree of the Circuit Court of the United States for the District of Washington, and directing said Court to dismiss the bill for want of jurisdiction, it being alleged in said bill that the alleged nuncupative will had been probated without jurisdiction; that the Court entering the decree of probate had not acquired jurisdiction to hear any evidence or take any steps for the probate of a nuncupative will wherein the estate bequeathed exceeded the value of two hundred dollars ($200.00); that no legal citation had been issued out of the Court; that the Court had acquired no jurisdiction to hear any proof; that under the laws of the State of Washington a nuncupative will is invalid where the estate bequeathed exceeds the value of two hundred dollars ($200.00); that the Court probating said will had no jurisdiction over the real estate of the deceased claimed by complainants as his sole heirs at law; that the Superior Court, without having acquired jurisdiction, was about to order the administrator to surrender the estate to the defendant claiming under the alleged will, and that the administrator would obey said order, and the action of the

administrator in obedience to said order would deprive complainants and each of them of their said property without due process of law, in violation of their rights under the Fourteenth Amendment to the Constitution of the United States; which allegations were denied in the answer of the defendant, Marie Carrau; and the jurisdiction of the Circuit Court of the United States having been invoked on the ground that complainants were about to be deprived of their property without due process of law, in violation of their rights under the Fourteenth Amendment to the Constitution of the United States, the said United States Circuit Court of Appeals had no jurisdiction of an appeal from the decree of said Circuit Court, and said United States Circuit Court of Appeals should have dismissed said appeal for want of jurisdiction to hear the same.

ARGUMENT.

Motion to Dismiss.

I.

The appellee, Marie Carrau, alone has moved to dismiss the appeal in this case. The grounds of the motion are thus stated by her counsel at page 10 of their brief:

"First: Because the decision of the Circuit Court of Appeals is final, under section 6 of the Judiciary Act of March 3, 1891; and

"Second: Because it is clear from the record that

neither the Circuit Court, the Circuit Court of Appeals, nor this Court has any jurisdiction of the case."

We agree with her counsel that the Circuit Court of Appeals had no jurisdiction of the case. We deny that this Court is without jurisdiction, and we deny that the Circuit Court was without jurisdiction.

The first question to be considered, then, is whether this Court is without jurisdiction for the reason that the decree of the Circuit Court of Appeals was final. If the decree of the Circuit Court of Appeals was not final, this Court has jurisdiction, because an appeal then exists as a matter of right.

"But to impress the attribute of finality upon a judgment of the Circuit Court of Appeals, it must appear that the original jurisdiction of the Circuit Court was *dependent 'entirely'* upon *diverse citizenship.*"

Northern Pacific v. Soderberg, 188 U. S. 526.

Ayres v. Polsdorfer, 187 U. S. 585.

Howard v. U. S. to the use of Stewart, 184 U. S. 676.

Hugulay Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290.

Loeb v. Columbia Township, 179 U. S. 472.

Robinson v. Caldwell, 165 U. S. 359.

Colo. Cent. Co. v. Turck, 150 U. S. 138.

The bill invoked the jurisdiction of the Circuit Court upon two grounds:

First: Because complainants were aliens, subjects of the King of Great Britain and Ireland, and defendants

were citizens of the United States and of the State of Washington, and the amount involved was sufficient.

Second: Because the case involved the construction and application of the Fourteenth Amendment to the Constitution of the United States, to prevent complainants from being deprived of their property without due process of law, under authority of the State of Washington, by a judgment of the state court and proceedings thereon, all rendered and taken without jurisdiction and without notice to complainants.

The opinion of the Circuit Court, which it is permissible to refer to,

(*Loch v. Trustees*, 179 U. S. 472)

shows that the Circuit Court treated both grounds of jurisdiction as well founded (131-133).

In the opinion of the Circuit Court of Appeals, that Court said:

"We are of the opinion that the court below was without jurisdiction of the subject matter of the suit, and further that all necessary parties were not before the court, some of whom, if made parties, would have ousted the court of jurisdiction. On both of these grounds we think that the court below should have dismissed the bill at the complainants' cost (834). * * * Without reference to the merits of the suit, concerning which we cannot properly indicate any views, it results that the judgment must be and hereby is, reversed, and the cause remanded to the court below with directions to dismiss the bill at complainants' cost." (845.)

The first question then, which is presented to this court, is whether the decree of the Circuit Court of Appeals was final because the jurisdiction of the Circuit Court was *dependent entirely on diverse citizenship*, and that therefore this court is without jurisdiction.

As before stated, the Circuit Court of Appeals held that jurisdiction in the Circuit Court could not exist by reason of diverse citizenship. Does the word "dependent" in that clause of the Act of March 3, 1891, making the decree of the Circuit Court of Appeals final in all cases where the jurisdiction is dependent entirely on diversity of citizenship, mean that jurisdiction in the Circuit Court must exist entirely by reason of diverse citizenship, or does it mean that the jurisdiction of the Circuit Court must be *invoked entirely* upon the ground of diverse citizenship? If the meaning of the statute is that jurisdiction must *exist* in the Circuit Court entirely by reason of diverse citizenship, then the decree of the Circuit Court of Appeals could not be final in a case where the decree of the Circuit Court of Appeals holds that such jurisdiction did not exist.

If, upon the other hand, the word "dependent" means "invoked," then it is equally clear that the decree of the Circuit Court of Appeals in this case was not final, because the bill shows that the jurisdiction of the Circuit Court was invoked, not only on the ground of diverse citizenship, but also upon the ground, specifically alleged in the bill, that the complainants were under State authority about to be deprived of their property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

The interpretation which has been placed by this court upon the word "dependent" in the act, has not been uniform. It has in some cases been interpreted as meaning that the jurisdiction of the Circuit Court must have *attached;* in others, that it must have been *invoked.* It is apparent that entirely different results might follow by giving these different meanings to the same word. If the word "dependent" means "attached," in the sense that jurisdiction in the Circuit Court must *exist entirely* by reason of diversity of citizenship, as distinguished from the jurisdiction being *invoked* upon that ground but not existing, then there is no difficulty in harmonizing the various provisions of the act. If, however, the word "dependent" is to be interpreted as synonymous with "invoked," then the decree of the Circuit Court of Appeals cannot be held final, where the bill invokes the jurisdiction of the Circuit Court both upon diversity of citizenship and also upon other grounds, although if such other grounds only were pleaded they might not be sufficient to cause the jurisdiction of the Circuit Court to attach.

It cannot, we submit, be the law, that in determining the question of the finality of a decree of the Circuit Court of Appeals, the word "dependent" means "invoked" upon the ground of diversity of citizenship only, and therefore, whether rightfully or wrongfully invoked on that ground, the decree of the Court of Appeals is final, while the same word, in determining whether the jurisdiction of the Circuit Court is dependent on that ground, and also some other ground, means that such other ground of jurisdiction of the Circuit Court must in fact exist in order to prevent the decree of the Circuit Court of Appeals from being final.

In the case of

Florida Central & Peninsular R. R. Co. v. Bell, 176 U. S., 321,

the plaintiffs brought a joint action in ejectment against the railroad company, a Florida corporation. The citizenship of certain of the plaintiffs was disclosed by the complaint. The citizenship of the other plaintiffs was not shown. The Circuit Court took jurisdiction of the case on the theory that it was one arising under the laws of the United States. Judgment was rendered in favor of the plaintiffs. A writ of error was taken to the Circuit Court of Appeals, and the judgment of the Circuit Court was affirmed. A writ of error was then prosecuted to this court to review the judgment of the Circuit Court of Appeals.

Mr. Justice Shiras, in delivering the opinion of this court said:

"Our first inquiry is whether this court has jurisdiction to review the judgment of the Circuit Court of Appeals. The writ of error in this case was brought under section 6 of the Judiciary Act of March 3, 1891. If the judgment of the Circuit Court of Appeals was final under that section, this writ of error must be dismissed. In order to maintain our jurisdiction it must appear that the jurisdiction of the Circuit Court was not dependent solely upon the opposite parties being citizens of different states. Colorado Cent. Consol. Min. Co. v. Turck, 150 U. S. 138, 14 Sup. Ct. Rep. 35; Press Pub. Co. v. Monroe, 164 U. S. 105.

"This question must be answered upon an inspection of the declaration of the plaintiffs in the Circuit Court. Does it disclose that plaintiffs *invoked* the jurisdiction of that court because the parties were citizens of different

states, or because the case was alleged to be one arising under the constitution, laws or treaties of the United States? The action was in ejectment, to recover possession of a tract of land in Hillsboro County, State of Florida. The plaintiffs were eight in number, three of whom were alleged to be citizens of the State of Texas, and there was no allegation as to the citizenship of the other five. The defendant, the Florida Central and Peninsular R. R. Co., was alleged to be a corporation organized and existing under the laws of Florida, hence upon the face of the declaration the jurisdiction of the Circuit Court would have failed, at least as to five of the plaintiffs, if that jurisdiction depended solely on the citizenship of the parties. The declaration, however, alleges that the plaintiffs claim title to the land in dispute by virtue of a patent granted to their ancestor by the Government of the United States; that the defendant claimed title under the first section of an Act of Congress entitled 'An Act granting public lands in alternate sections to the States of Florida and Alabama, to aid in the construction of certain railroads in said states' approved May 17, 1856; and further, that the defendant railroad company claimed and insisted that it was entitled to locate and maintain the route of its road through the land in question under said Act of Congress.

"Accordingly, it appears that the *theory* of the plaintiffs in bringing their suit in the Circuit Court of the United States was that the controversy was between a patentee of the United States and a railroad company claiming a right to occupy the land embraced in the patent by virtue of an Act of Congress, and was therefore, a case arising under the laws of the United States. This was the view of the judge who tried the case in the Circuit Court, as he refused to grant defendants' motion to dismiss for want of jurisdiction, and this view was also taken by the Circuit Court of Appeals, as appears in the following passage of its opinion:

" 'There is no effort in this case to found the jurisdiction of the Circuit Court on the diverse citizenship of the parties. There is nothing in the record to indicate that the judge of the Circuit Court entertained jurisdiction of the case on that ground. * * *'

"As, then, the plaintiffs in the Circuit Court *claimed* in their declaration that the controversy was one that turned on a construction of the laws of the United States, and as both the courts below dealt with the case on that assumption, it is plain that it cannot be successfully contended in this court that the judgment of the Circuit Court of Appeals was final, because the jurisdiction of the Circuit Court was dependent entirely upon the opposite parties being citizens of different states. * * *

"We come to the case, then, as one in which we have a right to supervise the judgment of the Circuit Court of Appeals, and the first question, and indeed, as we read the record, the only one we have to meet, is whether the Circuit Court had jurisdiction of the case? Not having, as we have seen, jurisdiction, because of a controversy between citizens of different states, did it have jurisdiction because the case was one arising under the Constitution and laws of the United States? This question was answered affirmatively in both courts below, and this because, as it seemed to them, the plaintiff's declaration disclosed such a case. * * *

"(p. 332). Apart from the question of jurisdiction arising from the presence of any Federal question, can it be said that jurisdiction did *attach* in respect to those plaintiffs who were alleged to be citizens of Texas? * * *

"(p. 335). As, then, in the present case, the plaintiffs elected to assert a joint claim and title to the land in dispute, and recovered a joint judgment for their undivided interest therein, and as the plaintiff's declaration discloses no Federal question, the principles of the cited cases apply, and compel a dismissal of the suit for want of jurisdiction in the Circuit Court. * * *

"The judgment of the Circuit Court of Appeals is reversed. The judgment of the Circuit Court is likewise reversed, and the cause is remanded to that court with directions to dismiss the action for want of jurisdiction."

This case, therefore, clearly shows that the construction to be given to the clause of the act making the decrees of the Circuit Courts of Appeals final, is to be determined, not by ascertaining whether jurisdiction in the Circuit Court exists, but whether it is claimed in good faith and not fictitiously in the pleading which invokes the jurisdiction of the Circuit Court. It is also plain, from this decision, that in determining the finality of the decree of the Circuit Court of Appeals, the question is not, upon what ground can the decree of the Circuit Court be sustained, because in the case just cited, it could not be sustained at all; but the question is, upon what ground was the jurisdiction *invoked* by the party seeking it?

If the decree of the Circuit Court of Appeals is to be held final in cases where the jurisdiction of the Circuit Court cannot attach by reason of any Federal question, although invoked on that ground, then the decision just cited would not have been rendered. Neither in the case at bar, can the decree of the Circuit Court of Appeals be held final because the jurisdiction of the Circuit Court is dependent entirely on diverse citizenship, for the jurisdiction of the Circuit Court was invoked on other grounds than diverse citizenship, and the Circuit Court of Appeals denied the jurisdiction of the Circuit Court on the ground of diverse citizenship.

"When the question is whether a judgment of the Circuit Court of Appeals is final in a particular case, it may well be that the jurisdiction of the Circuit Court is, within the meaning of that section, to be regarded as dependent entirely upon the diverse citizenship of the parties if the plaintiff *invoked* the authority of that court *only upon that ground*.

Loeb v. Trustees, 179 U. S. 472, 479.

"Section 6 provides that the Circuit Courts of Appeals shall exercise appellate jurisdiction to review the final decisions of the District and Circuit Courts 'in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law, and the judgments or decrees of the Circuit Courts of Appeals, shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states.' The jurisdiction referred to is the jurisdiction of the Circuit Court, and as the judgment of the Court of Appeals is made final in all cases in which the jurisdiction of the Circuit Court *attaches solely by reason of diverse citizenship*, it follows that the Court of Appeals has power to review the judgment of the Circuit Court in *every such case*, notwithstanding constitutional questions may have arisen *after the jurisdiction of the Circuit Court attached*, by reason whereof the case became embraced by section 5."

American Sugar Refining Co. v. New Orleans, 181 U. S. 277, 280.

From these cases it would seem necessarily to follow that the decree of the Circuit Court of Appeals holding that the jurisdiction of the Circuit Court had not attached, was not final. If, in order to render the decree of the Circuit Court of Appeals final, the word "dependent" is to be interpreted as "attached," the decree in the case at bar was not final, because the court held that the jurisdiction never attached. If the word "dependent" is to be interpreted as synonymous with "invoked," the decree of the Circuit Court of Appeals was not final, because the jurisdiction of the Circuit Court was invoked not entirely upon the ground of citizenship, but upon that ground and also upon the ground that the case was one involving the construction and application of the Constitution of the United States.

"The Act of March 3, 1891, chap. 517 (26 Stat. at L. 826), provides in section 6 that the circuit courts of appeals shall have appellate jurisdiction to review judgments and decrees of the circuit courts in all cases in which a direct appeal is not allowed by section 5 to this court, and that the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely on diversity of citizenship.

"The *jurisdiction* referred to is the *jurisdiction* of the circuit court as originally *invoked*. * * *

"If, *after* the jurisdiction of the circuit court *attaches* on the ground of diversity of citizenship, issues are raised, the decision of which brings the case within either of the classes set forth in section 5, then the case may be brought directly to this court, although it may be carried to the circuit court of appeals, in which event, the final judgment of that court could not be brought here as of right. * * *

"The ground on which the jurisdiction of the circuit court was *invoked was solely diversity of citizenship*, and the record does not show anything to the contrary, so that the decree of the circuit court of appeals cannot be regarded otherwise than as made final by the statute."

Huguley. Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290, 294.

"The plaintiff, in her *complaint, did not claim any right under the Constitution and laws of the United States*, or in any way mention or refer to that Constitution or to those laws; and at the trial, she relied wholly upon a right given by the common law, and maintained her action upon such a right only. It was the defendant, and not the plaintiff, who *invoked* the Constitution and laws of the United States."

Press Pub. Co. v. Monroe, 164 U. S. 105, 112.

The appeal from the Circuit Court of Appeals was therefore dismissed.

In

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397,

this Court had presented the question whether the judgment of the Circuit Court of Appeals was final. The suit arose under the revenue laws. This Court held that it also arose under the Constitution of the United States. The Government contended that, as the decisions of the Circuit Court of Appeals were made final in cases arising under the revenue laws, this Court had no jurisdiction to review the decree of the Circuit Court of Appeals. This Court said:

"The meaning of the words 'arising * * * under the revenue laws' in the 6th section, is satisfied if they are held as embracing a case strictly arising under laws providing for internal revenues, and which does not by reason of any question in it, belong also to the class mentioned in the 5th section of that act. We do not think that the words quoted necessarily embrace a case carried to the Circuit Court of Appeals, which, although arising under the revenue laws and involving a construction of those laws, depends for a full determination of the rights of the parties upon the construction or application of the Constitution or upon the constitutionality of an act of Congress. We lean to that interpretation of the act which enables the defeated party in such case in the Circuit Court of Appeals to have, as of right, upon writ of error to that court, a re-examination here of the judgment (the requisite amount being involved), if the correctness of the judgment depends in whole or in part upon the application or construction of the Constitution or upon the constitutionality of any act of Congress drawn in question."

We submit, therefore, that in this case, inasmuch as the bill of appellants invoked the jurisdiction of the Circuit Court not only upon the ground of diversity of citizenship, but also upon the ground that the case involved the construction and application of the Constitution of the United States, the decree of the Circuit Court of Appeals, *if it had jurisdiction at all*, was not final.

II.

THE BILL STATED A CASE INVOLVING THE APPLICATION OF THE CONSTITUTION OF THE UNITED STATES.

The next question to be considered is, whether the bill did invoke the jurisdiction of the Circuit Court upon the ground that the suit involved the construction or application of the Constitution of the United States.

The allegations of the bill and the law of the State of Washington, of which the Circuit Court was called upon to take judicial notice, show substantially the following facts:

Complainants were the heirs at law and next of kin of one John Sullivan, deceased, who died on the 26th day of September, 1900, in King County, Washington, leaving there a large estate, consisting of real and personal property. A special administrator of the estate of the de-

ceased was appointed. Certain persons petitioned that general letters of administration on the estate should issue, and among them was the defendant, Marie Carrau, who filed a petition setting forth that the deceased had died intestate. The several petitions were brought on for hearing in the Superior Court of the State, and in November, 1900, a general administrator of the estate was appointed, who took possession of the real and personal property (4-5).

The law of the State of Washington provides (Laws of 1895, p. 197, Sec. 1):

"When a person dies seized of lands, tenements or hereditaments, or any right thereto, or entitled to any interest therein in fee or for the life of another, *his title shall rest immediately in his heirs or devisees*, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws. No administration of the estate of such decedent, and no decree of distribution or any other finding or order of any court shall be necessary in any case to vest such title in the heirs or devisees, but the same shall vest in the heirs or devisees instantly upon the death of such decedent; *provided, that no person shall be deemed a devisee until the will has been probated.* The title and right to possession of such lands, tenements or hereditaments so vested in such heirs or devisees, together with the rents, issues and profits thereof, shall be good and valid against all persons claiming adversely to the claims of any such heirs, or devisees, excepting only the executor or administrator when appointed, and persons lawfully claiming under said executor, or administrator; *and any one or more of such heirs or devisees, or their grantees, jointly or severally, may sue for and recover their respective shares or interests in any such lands, tenements or hereditaments, and the rents, issues and profits thereof, whether letters testamentary or of administration be granted or not, from any person except the executor or*

administrator, and those lawfully claiming under such executor or administrator."

This section was construed by the Supreme Court of the State, which decided that the title passes immediately upon the death of a decedent to his heirs.

In an opinion of the Supreme Court of the State of Washington, rendered December 16, 1904,

Corcoran v. Bell, Judge, et al., 78 Pac. 945,

that court reviewed and quashed an order of the Superior Court of the State of Washington for King County, made in the matter of this same estate of John Sullivan, deceased, which order was made by the Superior Court without notice to anyone, and directed the administrator to pay himself and his attorney large sums of money out of the estate. The Supreme Court held that the order, being entered without notice to the complainants in this suit, was void, and in reaching that conclusion that court construed this section of the Act of 1895, and said:

"The funds of this estate are the property of the distributees, consisting, as they do, of the rentals of real estate, and they are entitled to be protected therein as they would be in the real estate itself. In Kruger's Estate, 55 Pac. 1056, the Supreme Court of California said:

"'An order for the payment of money, by which the property of the heirs, legatees and devisees is to be taken from them, cannot be made without notice and an opportunity to them to be heard. It cannot require the citation of authority in support of the proposition that one may not be thus deprived of his property without process of law.'

"It is also contended that the applicants have no standing here, for the reason that it has not been established that they are heirs of the estate. The application, however, states that they are such, and also that litigation is pending between them and one Marie Carrau, who claims the entire estate as aforesaid. It therefore appears that the applicants not only claim to be heirs, but that they are proceeding in an orderly manner to establish their title to the funds of the estate. As orderly claimants of the estate, it cannot be the law that pending the resistance of their claim they have no right to be heard as to the disposition that shall be made of the funds by the custodian thereof. In that event it would be possible for the entire estate to be dissipated before their rights could be finally adjudicated. Under the statute of 1895, session laws of that year, page 197, the title of lands, or any interest therein, vests immediately in the heirs. See also: Griffin v. Warburton, 23 Wash. 231; Anrud v. Scandinavian-American Bank, 27 Wash. 16.

"*Since the title vests in the heir at the time of the decedent's death, he is entitled thenceforth to be heard as to the disposition of the estate*, and the mere fact that a resistance to his claim of heirship may exist does not deprive him of such right. The administrator who seeks to pay out the funds of the estate for his own and counsel's services must recognize the right to be heard on the part of all claimants as heirs or devisees who proceed in a regular way, until conflicting claims have been finally adjudicated. It follows from the foregoing that the respondents' demurrer to the application for a writ of review, and their motion to be discharged thereon, must be overruled."

On the 8th of March, 1901, the appellee, Marie Carrau, filed her petition in the Superior Court of the State for King County, in which she alleged that the deceased, John Sullivan, the night before his death made a nuncupative will, whereby he bequeathed and devised to her his entire estate, and she prayed that the will be probated (7).

The law of Washington does not create the right to make a nuncupative will. It simply imposes additional restrictions upon the common law right.

Laws of Washington, 1854, pp. 315 and 316, Secs. 23, 24 and 25, provide:

"Sec. 23. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, nor unless such nuncupative will was made at the time of the last sickness and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return.

"Sec. 24. Any mariner at sea, or soldier in military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

"Sec. 25. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper."

Pierce's Code of Washington, Sec. 2331 (Ballinger's Code, Sec. 6083), provides:

"In all cases in which citations are issued from the Superior Court in probate proceedings, they shall be served at least ten days before the term at which they are made returnable, except when issued from the court in

cases where the law requires the judge to issue them upon his own motion, and he does so issue them; and in such cases they shall be served in sufficient time to allow the person served to be in attendance on the court."

Code 1881, Sec. 1303 (Pierce's Code, Sec. 2321), provides:

"All process issuing out of the probate court shall be attested by the clerk and sealed with the seal of the court, *and shall be served in the same manner as process issuing out of the* (Superior) *District Court*."

Where process issues out of the Superior Court of the State, and personal service cannot be made within the State, service may be made by publication, but in that event the party so served is not required to appear until sixty days from the date of the first publication. Personal service in an action *in rem* may also be made outside of the State, but in such case the person served may appear and answer at any time within sixty days after such personal service out of the State.

Pierce's Code of Washington provides:

"Sec. 335. When the defendant cannot be found within the state, of which the return of the sheriff of the county in which the action is brought that the defendant cannot be found in the county is *prima facie* evidence, and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state or cannot be found therein, and that he has deposited a copy of the summons and complaint in the postoffice, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publica-

tion of the summons by the plaintiff or his attorney in either of the following cases. * * *

"Sec. 336. The publication shall be made in a newspaper printed and published in the county where the action is brought * * * once a week for six consecutive weeks, provided that publication of summons shall not be had until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication as aforesaid. The summons must be subscribed by the plaintiff or his attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of such summons. * * *

Sec. 337. Personal service on the defendant out of the state shall be equivalent to service by publication, and the summons upon the defendant out of the state shall contain the same as personal summons within the state, except it shall require the defendant to appear and answer within sixty days after such personal service out of the state."

The Superior Court of the State of Washington became the successor of the district and probate courts of the Territory. It is vested with jurisdiction in equity, at law, and in matters of probate.

Constitution of Washington, Art. XXVII, Sec. 10, and Art. IV, Sec. 6.

The bill alleged (8, 9), that immediately upon the petition being filed, a citation was issued by the Superior Court and placed in the hands of the sheriff of the county for service upon the widow and next of kin of the deceased; that the sheriff immediately returned the citation, stating

that he was unable to find any such persons in King County, and the state court immediately assumed to admit the pretended nuncupative will to probate, and that the same now stands as though legally probated, on the records of the court; that the Superior Court acted wholly without jurisdiction in assuming to probate the will; that it had no jurisdiction to hear any evidence or to take any steps for the probate of a nuncupative will, where the estate bequeathed exceeded the value of $200.00, and that it was also without jurisdiction to hear any proof for the probate of the will, for the reason that no legal citation had been issued out of the court and because ten days had not elapsed betwen the filing of the pretended will and the hearing of the proof offered in support of the same, and that a nuncupative will is, under the laws of Washington, invalid where the estate bequeathed exceeds the value of $200.00, and that even if valid it could not dispose of real estate.

The bill alleged that the defendant Carrau had filed her petition in the Superior Court of the State, praying that the entire estate, including the real and personal property, should be distributed to her, and that the Superior Court would, complainants were informed and believed, distribute the estate to her; that she was insolvent, and if she received possession of the property she would dispose of the same and put the complainants to the necessity of instituting a multiplicity of suits; that the Superior Court was without jurisdiction to distribute the real estate, or any part thereof; that the real estate and the rents and profits produced thereby since the death of the deceased, were the property of the complainants; that the adminis-

trator would obey the order of the Superior Court and surrender the real estate and the rents and profits to the defendant Carrau, and thereby the complainants would be deprived

"*of their said property without due process of law, in violation of the rights of your orators and each of them under the Fourteenth Amendment to the Constitution of the United States.*" (8, 9).

The bill further alleged that if the pretended probate be allowed to stand, the will was invalid, and that if valid it could not convey real estate; and it prayed that the defendant Marie Carrau be enjoined and restrained from receiving possession of the property or interfering with it in any manner during the pendency of the suit, and that upon final hearing she be perpetually restrained and enjoined from setting up any title or claim under the pretended will, and that the administrator be required to account to the complainants for the property. (9.)

Sec. 2671 of Pierce's Code of Washington (Ballinger's Code, Sec. 6374), provides:

"At any time after six months from the issuing letters testamentary or of administration, any heir, legatee or devisee may present his petition to the court that the legacy or share of the estate to which he is entitled may be given to him upon his giving bonds, with security, for the payment of his proportion of the debts of the estate."

It was under this section that the defendant Marie Carrau, as an alleged legatee and devisee of the deceased, had filed her petition praying the distribution of the estate to her, and in order to file this petition she was, of course,

bound to set up as her muniments of title, the alleged nuncupative will and the alleged decree probating the will made, on the same day the petition for probate was filed, and without notice to complainants or any one else.

The statute of 1895, above set forth, expressly provided:

"No person shall be deemed a devisee until the will has been probated."

It will be seen, therefore, that the title to the real property of the deceased had, immediately on his death, vested in complainants, and the title to the personalty had vested in the administrator on his qualification, in trust for complainants. The defendant Carrau could not divest them of that title and become a devisee and legatee, except by a decree of court probating the will. The statute above cited provided that:

"No proof shall be received of any nuncupative will unless offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper." (Pierce's Code, 2352.)

It appears from the bill that at the time it was filed more than six months had elapsed since the death of the deceased. If the alleged will had not then been probated, complainants' title to the property was absolute. Whether the alleged will had been probated or not depended on whether the court had acquired jurisdiction to render a decree probating the will. If the court had no jurisdic-

tion to probate the will, and the defendant Carrau, by using the decree of probate as a muniment of title, was about to obtain from the administrator the property in his custody belonging to the complainants, by the authority of the state court, complainants would be deprived of their property without due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States. In other words, the question presented by the bill was not simply whether the decree probating the will was valid or void, but, being void for want of jurisdiction in the court to render it, the attempt to take the property of the complainants by authority of the void decree and under authority of the State Court, was a violation of their rights under the Fourteenth Amendment.

In

Fayerweather v. Ritch, 195 U. S. 276,

a direct appeal from the decree of the Circuit Court of the United States had been taken into this court, on the ground that the suit was one involving the application of the Constitution of the United States. Diversity of citizenship also existed. A motion was made to dismiss the appeal.

Mr. Justice Brewer, in delivering the opinion of this court, said (p. 297):

"Our jurisdiction of this direct appeal from the decision of the Circuit Court is invoked on the ground that the case involves the application of the Constitution of the United States. The contention is that by Article 5 of the Amendments to the Federal Constitution no person can 'be

deprived of life, liberty or property without due process of law;' that these plaintiffs were entitled to large shares of the estate of Daniel B. Fayerweather; that they were deprived of this property by the judgment of the Circuit Court, which gave unwarranted effect to a judgment of the state courts; that this action of the Circuit Court is not to be considered a mere error in the progress of a trial, but a deprivation of property under the forms of legal procedure. In Chicago, Burlington, &c., Railroad v. Chicago, 166 U. S. 226, we held that a judgment of a state court might be here reviewed if it operated to deprive a party of his property without due process of law, and that the fact that the parties were properly brought into court and admitted to make defense, was not absolutely conclusive upon the question of due process.* * *

(P 298.) "It is said that the rights of these plaintiffs to share in the estate of Daniel B. Fayerweather is undoubted, unless destroyed by the releases they executed; that the fundamental question presented in the trial court of the state was the validity of those releases; that notwithstanding this, that court came to its conclusion and rendered its judgment without any determination thereof; that the appellate courts wrongfully assumed that the trial court had decided the question, and rendered their judgments upon that asumption, so that the necessary result of the proceedings in the state courts was a deprivation of the right of the plaintiffs to a share of the estate without any finding of the vital fact which alone could destroy their right. The contention is not that the state courts erred in their finding in respect to this fact, but that there never was any finding. Such decision of the state courts, made without any finding of the fundamental fact, was accepted in the Circuit Court of the United States as a conclusive determination of the fact. *Although these plaintiffs were parties to the proceedings in the state courts, and presented their claim of right, if it be true that the necessary result of the course of procedure in those courts was a denial of their rights—a taking away and depriving them of their property without any judicial determination of the fact upon which alone such depriration could be justified—a case is presented coming directly within the decision in* 166 *U. S. supra. Giving effect in the Circuit Court to the*

state judgment, does not change the character of the question. It is merely adding the force of a new determination to one wrongfully obtained, and adding it upon no new facts. Whether the contention of the plaintiffs in respect to the character of the state proceedings can be sustained or not, is a question upon the merits, and does not determine the matter of jurisdiction. That depends upon whether there is presented a bona fide and reasonable question of the wrongful character of the proceedings in the state courts, and the necessary result therefrom. We are of opinion that the jurisdiction of this court must be sustained."

In the case now before the court, the complainants are entitled to the entire estate of John Sullivan, deceased, unless they have been deprived of that estate by the pretended nuncupative will probated by a decree founded upon fraud and manufactured evidence, rendered by a court *ex parte*, without notice to anyone and without jurisdiction to hear any proof in support of the alleged will. If the rendition of a judgment in a proceeding to which there are parties, without any determination of the issues raised, is depriving the parties, against whom the decision is rendered, of their property without due process of law, it necessarily follows that the rendition of a judgment without acquiring jurisdiction either of the subject matter or of the parties against whom the decision is rendered, is equally a depriving of those parties of their property without due process of law, and when a bill alleges those facts, and in addition thereto specifically alleges that the property of the complainants, pursuant to such proceedings, is about to be taken from them without due process of law, in violation of their rights under the Fourteenth Amendment of the Constitution of the United States, it would seem that the case at bar is much stronger in presenting a case involving

the application of the Constitution of the United States than the case of Fayerweather v. Ritch, *supra*.

In

Corcoran v. Bell, 78 Pac. 945,

in the matter of Sullivan's Estate, the Supreme Court of the State of Washington, considering the force of orders made *ex parte*, without notice to these complainants, under which orders the administrator paid out the funds of the estate to himself and his attorney, granted an order quashing the orders of the Superior Court on the application of these complainants, and said:

"It is the position of the applicants that the orders are void, as having been made without jurisdiction, for the reason that they were made entirely *ex parte* and without notice of any kind to persons interested as distributees of the estate. The principle involved seems to be so fundamental that citation of authorities is unnecessary."

If an order made without notice to these complainants, which took from them a part of the estate, was void because to give it effect would be to deprive them of their property without due process of law, it necessarily follows that a decree of probate rendered without notice to these complainants, although the statute forbade the court rendering the decree to hear any proof until they had been notified, and which deprives them of the entire estate, is void for the same reason.

In

Scott v. McNeal, 154 U. S. 34,

this court had before it on writ of error to the Supreme

Court of the State of Washington, the question whether Scott had been deprived of his property without due process of law. The court said:

"The plaintiff formerly owned the land in question, and still owns it, unless he has been deprived of it by a sale and conveyance, under order of the Probate Court of the County of Thurston and Territory of Washington, by an administrator of his estate, appointed by that court on April 20, upon a petition filed April 2, 1888. * * *

The fundamental question in the case is whether letters of administration upon the estate of a person who is in fact alive have any validity or effect as against him. * * * *

The 14th Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, 'nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the state, whether through its legislative, its executive or its judicial authorities.

Ex parte Virginia, 100 U. S. 313, 318, 319.
Ex parte Virginia, 100 U. S. 339, 346.
Neal v. Delaware, 103 U. S. 370, 397.

And the first one, as said by Chief Justice Waite in United States v. Cruikshank, 92 U. S. 542, 554, repeating the words of Mr. Justice Johnson in Bank of Columbia v. Okely, 17 U. S. 4 Wheat. 235, 244, was intended 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'

Upon a writ of error to review the judgment of the highest court of a state upon the ground that the judgment was against a right claimed under the Constitution

of the United States, this court is no more bound by that court's construction of a statute of the territory, or of the state, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the state, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another state. In every such case, this court must decide for itself the true construction of the statute.

Huntington v. Attrill, 146 U. S. 657, 683, 684.
Mobile & O. R. Co. v. Tennessee, ante, p. 793.

No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.

The words 'due process of law,' when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation —to pass upon the subject matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance.' "

The court then held that the statute of Washington did not warrant the conclusion that the probate court was authorized to conclusively decide against a living person that he was dead, and that his estate was therefore subject to be administered on and disposed of by the probate court, and the judgment of the Supreme Court of the State of Washington affirming the judgment of the Superior Court in the

case where the record in the administration proceedings had been introduced against Scott, was reversed.

The sole ground upon which this court obtained jurisdiction on the writ of error to the Supreme Court of the State of Washington was that the judgment holding that Scott was dead, when he was in fact alive, under which judgment his property had been taken, was void, and that when that judgment was received in evidence as a muniment of title, Scott was thereby deprived of his property without due process of law.

In

Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 234

this court, speaking of the Fourteenth Amendment, said:

"But it must be observed that the prohibitions of the amendment refer to all the instrumentalities of the state; to its legislative, executive and judicial authorities, and therefore, whoever by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the state, 'violates the constitutional inhibition, and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the state has clothed one of its agents with power to annul or evade it.' * * *

These principles were enforced in the recent case of Scott v. McNeal, 154 U. S. 34, in which it was held that the prohibitions of the 14th Amendment extended to 'all acts of the state, whether through its legislative, its executive, or its judicial authorities, and consequently it was held that a judgment of the highest court of a state, by which a

purchaser at an administration sale, under an order of a probate court, of land belonging to a living person who had not been notified of the proceedings, deprived him of his property without due process of law, contrary to the 14th Amendment."

In

Winsor v. McVeigh, 93 U. S. 274, 277,

Mr. Justice Field, delivering the opinion of this court, said:

"A sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. That there must be notice to a party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. *Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be by the law of its organization, over the subject matter.*"

At page 281 of the opinion, Mr. Justice Field said, in reference to proceedings *in rem*, and after citing Woodruff v. Taylor, 20 Vermont, 65:

"The court observed that in every court and in all countries where judgments were respected, notice of some kind was given, and that it was just as material to the validity of a judgment *in rem* that constructive notice at least should appear to have been given, as that actual notice should appear upon the record of a judgment *in personam*.

'A proceeding,' continued the court, 'professing to determine the right of property where no notice, written or constructive, is given, whatever else it might be called, would not be entitled to be dignified by the name of a judicial proceedings. It would be a mere arbitrary edict, not to be regarded anywhere as the judgment of a court.'"

In

Earle v. McVeigh, 91 U. S. 503, 510,

this court said:

"Even in proceedings *in rem*, notice is requisite in order that the sentence may have any validity. 'Every person,' said Marshall, C. J., 'may make himself a party to such a proceeding and appeal from the sentence, but notice of the controversy is necessary in order that one may become a party, and it is a principle of natural justice, of universal obligation, that before the rights of an individual can be bound by a judicial sentence, he shall have notice, either actual or implied, of the proceding against him.'"

In

Hovey v. Elliott, 167 U. S. 409,

Mr. Justice White, in delivering the opinion of the court, said, at page 417:

"Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the government were to enact a statute conferring the right to condemn the citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution? If such power obtains, then the judicial department of the government sitting to uphold and enforce the Constitution, is the only one possessing a power to disregard it. If such authority exists, then in consequence of their establishment to compel obedience to law and to enforce justice, courts possess the right to intlict the very wrongs which they were created to prevent.

In

Galpin v. Page, 86 U. S., 18 Wall. 350,

the court said, (p. 368):

'It is a rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. *Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered.*'

Again, in

Ex parte Wall., 107 U. S. 289,

the court quoted with approval the observations as to 'due process of law,' made by Judge Cooley, in his Constitutional Limitations, at page 353, where he says:

'Perhaps no definition is more often quoted than that given by Mr. Webster in the Dartmouth College case, 17 U. S., 4 Wheat. 518: 'By the law of the land is most clearly intended the general law; a law which hears before it condemns, which proceeds upon inquiry and renders judgments only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.'
* * *

The necessary effect of the judgment of the Supreme Court of the District of Columbia was to decree that a portion of the award made in favor of the defendant, in other words his property, belonged to the complainants in the cause. The decree therefore awarded the property of the defendant to the complainants upon the hypothesis of fact that by contract the defendant had transferred the right

in or to this property to the complainant. *If the court had power to do this, by denying the right to be heard to the defendant, what plained illustration could there be of taking property of one and giving it to another without hearing or without process of law?"*

In

Lavin v. Emigrant Industrial Savings Bank, 18 Blatch., 1,

approved by this court in the case of Scott v. McNeal, 154 U. S. 34, the plaintiff sued to recover money deposited by him with the defendant. The answer of the defendant admitted the deposit in the years 1865 and 1866, but set up as a defense that an application had been made on the 14th of February, 1877, to the Surrogate of the City and County of New York for letters of administration upon the estate of Lavin; that the Surrogate decided that Lavin had died intestate, and he thereupon appointed Brennan administrator; that the defendant had paid the deposit to the administrator. The question before the court was whether the appointment of the administrator by the Surrogate and the payment to the administrator by the defendant was legal as against the plaintiff, or whether it would, if given effect, deprive the plaintiff of his property without due process of law, in contravention of the Fourteenth Amendment to the Constitution.

After reviewing the authorities the court said:

"For these reasons it must be held that the proceeding taken under the laws of New York, which are set up as justifying the defendant's refusal to pay to the plaintiff the amount of his deposits, is void as to him, because it would deprive him of his property without 'due process of law.'"

In

Roller v. Holly, 176 U. S. 398,

this court had before it the question whether, in an action *in rem*, the statute of Texas authorizing service of process returnable within five days to be made upon a person outside of Texas constituted due process of law, where the person served was at the time of service in Virginia. This court said:

"In short, for aught that appears here, parties may be called from the uttermost parts of the earth to come to Texas and defend suits against them within five days from the day the notice is served upon them. * * *. *That a man is entitled to some notice before he can be deprived of his liberty or property is an axiom of the law to which no citation of authority would give additional weight.* * * *

Without undertaking to determine what is a reasonable notice to non-residents, we are of opinion, under the circumstances of this case, and considering the distance between the place of service and the place of return, that five days was not a reasonable notice, *or due process of law; that the judgment obtained upon such notice was not binding upon the defendant.*"

Complainants resided in Ireland. The statute of the State required that notice should be given to them. The least notice they were entitled to was ten days, provided the service was personal service. (Pierce's Code, Sec. 2333, *supra.*)

If personal service could not be made, then service by publication should have been made in the same manner as in an ordinary suit. (Pierce's Code, Sec. 2321, *supra.*)

Until service the Superior Court had no jurisdiction to hear proof. It had no jurisdiction to render a decree.

If five days' notice in an action *in rem* instituted in Texas did not constitute due process of law as against a person served with process in the State of Virginia, we submit that a judgment divesting the appellants, then residing in Ireland, of their title to property inherited from the deceased, John Sullivan, was not due process of law, when founded on a citation issued by a court six thousand miles distant, and returnable on the same day, but at an hour already past when the process was issued.

The complainants, as heirs at law and next of kin of the deceased, were the owners of his entire estate, and the title to the real estate had vested in them immediately upon the death of the deceased; that estate was in the custody of the administrator, who, of course, held it in trust for the heirs and next of kin. Months after the death of the deceased the appellee Marie Carran, without notice to the administrator and without notice to the complainants, and upon false testimony, procured the entry of a judgment, which, if valid, divested the title of complainants to the property of the deceased and vested it in her; and she used that decree, rendered without jurisdiction, as a muniment of title. She asserted thereunder that she was the owner of the entire estate, and she made application to the State Court to exercise its authority and require the administrator of the estate to surrender to her possession of the real and personal property.

By the entry of the decree of probate, the title to the estate, which had vested in complainants on the death of

the deceased, had become clouded. This cloud was created by the act of the State Court, and the bill alleged that under authority of the State Court the administrator was about to surrender possession of the property to the appellee. That such a decree was void is clear; the injury done thereby to complainants by impairing their title was depriving them of their property, and that deprivation had been effected without due process of law.

"The essential elements of due process of law are notice and an opportunity to defend."

Simon v. Craft, 182 U. S. 427.

THAT THE DECREE OF PROBATE WAS VOID IS CLEARLY ESTABLISHED BY THE FOLLOWING AUTHORITIES:

Dolan v. Jones, 36 Wash., p—. (Not yet officially reported. Decided February 23, 1905.)
Corcoran v. Bell, Judge, et al., 78 Pac. 945.
National Exchange Bank v. Wiley, 195 U. S. 257.
Smith v. White, 32 Wash. 414.
Ball v. Clothier, 34 Wash. 299.
In re Leonard's Will, 65 New J. L. 167.
Randolph v. Bayne, 44 Cal. 370.
Charleboise v. Bourdon, Admr., 6 Mont. 373.
Ashurst v. Fountain, 67 Cal. 18.
Spencer v. Houghton, 68 Cal. 82.
Haws v. Clark, 37 Iowa 356.
Boales v. Shales, 29 Iowa 507.
Jones & Magee Co. v. Boggs, 63 Iowa 589.
Sprole v. Marshall, 4 Iowa 344.
Hodges v. Brett, 4 Iowa 345.

Melbourn v. Fouts, 4 Iowa 346.
Ferneker v. Case, 75 Iowa 152.
Joiner v. Delta Bank, 71 Miss. 382.
Hunsaker v. Coffin, 2 Or. 107.
Northcut v. Lemery, 8 Or. 317, 323.
Lewis v. Bishop, 19 Wash. 312.
Everett Water Co. v. Fleming, 26 Wash. 364.

If, in a suit in ejectment, the admission in evidence of a judgment rendered without jurisdiction for want of notice, and therefore not constituting due process of law, is depriving the person whose rights are affected thereby of his property in a manner forbidden by the Fourteenth Amendment to the Constitution of the United States, can it be denied that to allow such judgment to be used as a muniment of title to take the property of complainants from the possession of the administrator, who holds it in trust for them, is an act equally forbidden by the amendment, and therefore one which can be prevented by injunction before it is consummated, instead of being annulled after its execution?

Vicksburg Waterworks v. City of Vicksburg, 185 U. S. 65.
Walla Walla v. Walla Walla Water Works, 172 U. S. 1.
Pac. Elec. R. Co. v. Los Angeles, 194 U. S. 112.
Pac. Gas Improvement Co. v. Ellert, 64 Fed. 421.
Nashville C. & St. L. Ry. v. Taylor, 86 Fed. 168.

In the case at bar, not only did the bill show that there was involved in the suit the application of the Fourteenth Amendment to the Constitution of the United States, but

the opinion of the Circuit Court shows that that court in effect held that to give any effect to the decree, probating the alleged will, which was rendered without notice to anyone and before the court had acquired any jurisdiction to hear any proof, would have the effect of depriving complainants of their property without due process of law. The opinion of the Circuit Court shows that the court held that while the alleged will never had been made, yet if it had been made, and if the deceased thereby had intended to convey to the defendant Marie Carrau his entire estate, the complainants could not be disinherited by the alleged will, because it had not been probated within six months from the death of the deceased. (130, 131.)

In order to hold that the alleged will had not been probated within six months after the death of the deceased the court was obliged to hold that the decree of probate was a nullity. It will be seen, therefore, that the effect of the decree of probate was a vital question in the case. If the alleged will had never been probated, then the title of complainants was absolute. If the alleged will had been probated, and if it conveyed real estate, they might have been disinherited. It appears, therefore, that not only was the application of the Constitution involved, but that the Constitution was applied by the trial court in deciding the case.

III.

THE CIRCUIT COURT OF APPEALS HAD NO JURISDICTION OF THE APPEAL FROM THE DECREE OF THE CIRCUIT COURT.

Assuming, then, that there was presented by the bill a case involving the construction or application of the Constitution of the United States, the question arises, to what court should the defendant Marie Carrau have appealed when the decree of the Circuit Court was rendered in favor of the complainants?

It is clear from the decisions of this court that if a constitutional question was presented by the bill, and the jurisdiction of the Circuit Court was invoked upon no other ground, this court would have exclusive jurisdiction of an appeal from the decree of the Circuit Court.

Union & Planters' Bank v. Memphis, 189 U. S. 71.
American Sugar Ref. Co. v. New Orleans, 181 U. S. 277.

If the jurisdiction of the Circuit Court was dependent on a federal question other than one of the those specified in Sec. 5 of the Act of March 3, 1891, then the Circuit Court of Appeals would have jurisdiction of an appeal from the Circuit Court, but its decision would not be final.

Northern Pacific R. R. Co. v. Soderberg, 188 U. S. 526.
Howard v. U. S. to the Use of David Stewart, 184 U. S. 676.

If the suit is one where the jurisdiction of the Circuit Court is invoked because the construction or application of the Constitution of the United States is involved, then it is one which may be brought directly to this court from the Circuit Court, and the whole case is open upon such appeal.

Giles v. Harris, 189 U. S. 475.
Cummings v. Chicago, 188 U. S. 410.
Pac. Elec. R. R. Co. v. Los Angeles, 194 U. S. 112.
Field v. Barber Asphalt Pav. Co., 194 U. S. 618.
Holder v. Aultman M. Co., 169 U. S. 81.
Penn Mutual Insurance Co. v. Austin, 168 U. S. 685.
Loeb v. Columbia Township, 179 U. S. 472.
Whitten v. Tomlinson, 160 U. S. 231.
Chappell v. U. S., 160 U. S. 499.
Horner v. U. S., 143 U. S. 570.

This is so, although jurisdiction also exists because of diversity of citizenship.

Fayerweather v. Ritch, 195 U. S. 276, 299.
Davis & Farnum Co. v. Los Angeles, 189 U. S. 207.
Field v. Barber Asphalt Pav. Co., 194 U. S. 618.

If diversity of citizenship is shown by the bill, and in addition thereto it appears by the bill that the case is one involving the construction or application of the Constitution of the United States, if the case should be taken to the Circuit Court of Appeals its decree would not be final, because the jurisdiction of the Circuit Court would not have been dependent entirely on diverse citizenship; and yet, a direct appeal could have been taken to this court.

In

American Sugar Ref. Co. v. New Orleans, 181 U. S. 277,

this court said:

"The intention of the act in general was that the appellate jurisdiction should be distributed, and that there should not be two appeals, but in cases where the decisions of the courts of appeals are not made final it is provided that 'there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars besides costs.' (Sec. 6.)

And the right to two appeals would exist in every case (the litigated matter having the requisite value), where the jurisdiction of the circuit court rested solely on the ground that the suit arose under the Constitution, laws, or treaties of the United States, if such cases could be carried to the circuit courts of appeals, for their decisions would not come within the category of those made final. * * * * * * And as those cases fall strictly within the terms of section 5, the appellate jurisdiction of this court in respect of them is exclusive."

In that case the court felt it necessary to modify the language which had been used in the opinion in the case of Carter v. Roberts, 177 U. S. 496, and after quoting from the opinion in the Carter case, said:

"But language should not have been used susceptible of the meaning that in cases where the jurisdiction below is invoked on the ground of diverse citizenship the circuit court of appeals might decline to take jurisdiction, or, in other words, might dismiss the appeal or writ of error for want of jurisdiction. The mere fact that in such a case one or more of the constitutional questions referred to in

section 5 *may have so arisen* that a direct resort to this court might be had, does not deprive the court of appeals of jurisdiction, or justify it in declining to exercise it."

It is plain from this decision that had the Constitutional question been presented in the bill along with the claim of jurisdiction on the ground of diverse citizenship, the decision would have been that the Circuit Court of Appeals had no jurisdiction. The court was careful to point out that the Constitutional question first appeared *after* the jurisdiction of the Circuit Court had attached by reason of diverse citizenship. At page 280 the court said:

"The jurisdiction referred to is the jurisdiction of the circuit court, and as the judgment of the court of appeals is made final in all cases in which the jurisdiction of the circuit court *attaches solely by reason of diverse citizenship*, it follows that the court of appeals has power to review the judgment of the circuit court in every *such case*, notwithstanding constitutional questions may have arisen *after the jurisdiction of the circuit court attached*, by reason whereof the case became embraced by section 5."

If the mere existence of diverse citizenship was sufficient to vest jurisdiction in the Circuit Court of Appeals, regardless of the fact that the bill also invoked the jurisdiction of the Circuit Court on the ground of a constitutional question being involved, it would have been a simple matter to have said that the existence of diverse citizenship vested jurisdiction of the appeal in the Circuit Court of Appeals. It would have been entirely unnecessary to have carefully pointed out that the time when the constitutional question arose in the case was *after* the jurisdiction of the Circuit Court had *attached by reason of diversity of citizenship.*

In

Cinn. H. & D. R. Co. v. Thiebaud, 177 U. S. 615,

the Circuit Court of Appeals certified certain questions to this court, among them the following:

1. Has the Circuit Court of Appeals jurisdiction of a writ of error to the Circuit Court in a case in which it is claimed that a law of a state is in contravention of the Constitution of the United States, where the record presents other questions not involving the Constitution of the United States?

2. Has the Circuit Court of Appeals jurisdiction of a writ of error to the Circuit Court in a case in which it is claimed that the law of a state is in contravention of the Constitution of the United States, where the record presents other questions not involving the Constitution of the United States, which might require a reversal of the judgment without reference to such constitutional questions?

3. A third question was certified, as to whether a certain instruction disclosed a case in which it was claimed that the law of a state was in contravention of the Constitution of the United States.

This court said:

"The certificate shows that no question as to the constitutionality of the statute of Indiana relied on by the plaintiff below *was raised* or considered or decided *in the circuit court*, but that the objection made its appearance for the *first time in the assignment of errors* in the circuit court of appeals.

The third question propounded in the certificate must be answered in the negative, and we do not deem it necessary to answer the others."

In that case diversity of citizenship existed. It is plain that had the constitutional question appeared in the *original pleading* invoking the jurisdiction of the Circuit Court, the Supreme Court would have passed on the jurisdiction of the Circuit Court of Appeals when that question was certified to it, or would have held that the Circuit Court of Appeals was without jurisdiction to certify. It appearing, however, that the case in the Circuit Court of Appeals was one of which it had undoubted jurisdiction, it was unnecessary to answer a question propounded on a state of facts not in the case.

In

Union & Planters' Bank of Memphis v. Memphis,
189 U. S. 71,

diversity of citizenship did not exist. The jurisdiction of the Circuit Court had been maintained. An appeal from the Circuit Court had been taken to the Supreme Court of the United States. An appeal had also been taken to the Circuit Court of Appeals, which had affirmed the decree of the Circuit Court. From the decree of the Circuit Court of Appeals an appeal had been taken to this court. Mr. Chief Justice Fuller, in delivering the opinion of this court, said:

"Diversity of citizenship did not exist, and the jurisdiction of the Circuit Court rested solely on the ground that the cause of action arose under the Constitution of the United States. The appeal lay directly to this court

under section 5 of the Judiciary Act of March 3, 1891 (26 Stat. at L. 826, chap. 517, U. S. Comp. Stat. 1901, p. 547), and not to the circuit court of appeals. American Sugar Ref. Co. v. New Orleans, 181 U. S. 277. Nevertheless, an appeal having been prosecuted to the latter court, and having there gone to decree, an appeal was allowed to this court because the judgment was not made final in that court by Sec. 6 of the act. But the case being here, and the jurisdiction of the circuit court having depended on the sole ground that it arose under the Constitution, we are constrained to reverse the decree of the circuit court of appeals, not on the merits, but by reason of the want of jurisdiction in that court. *If this were not so, the right to two appeals would exist in every similar case, notwithstanding, as we have repeatedly held, that such was not the intention of the act.*"

If, in addition to the constitutional question, diversity of citizenship had existed, the decision of the Court of Appeals would not have been final, because the jurisdiction of the Circuit Court would not have been dependent entirely upon diversity of citizenship, and the case would also have been one wherein an appeal would lie directly from the decree of the Circuit Court to this Court. If, therefore, the reason for denying jurisdiction to the Circuit Court of Appeals was that if it exercised jurisdiction the right to two appeals would exist, then it follows that the same reason applies when the diversity of citizenship exists along with a constitutional question, equally with a case in which the constitutional question is the only ground on which jurisdiction is invoked.

The citation of the American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, in support of the statement of the opinion that unless jurisdiction was denied to the Circuit Court of Appeals in such case, the right to two appeals

would exist, shows clearly that the Circuit Court of Appeals has jurisdiction of cases in which a direct appeal will lie to the Supreme Court of the United States, *only when*, if a decision is rendered by the Circuit Court of Appeals, its decision is final because the jurisdiction of the Circuit Court is *invoked on the ground of diversity of citizenship only*, and the constitutional question appears *later* in the case.

The various Circuit Courts of Appeals have placed this construction upon the decision of this court in American Sugar Ref. Co. v. New Orleans, *supra*.

In

Keyser v. Lowell, 117 Fed. 400,

the Circuit Court of Appeals for the Eighth Circuit, in maintaining its jurisdiction, said:

"Where the jurisdiction of the circuit court *originally attaches solely by reason of diverse citizenship*, and a constitutional question *subsequently arises*, the circuit court of appeals has jurisdiction to review the decision of that questions below, and to finally determine it. American Sugar Ref. Co. v. City of New Orleans, 181 U. S. 277."

In

City of Owensboro v. Owensboro Water Co., 115 Fed. 318,

the Circuit Court of Appeals for the Sixth Circuit dismissed an appeal for want of jurisdiction. Diversity of citizenship did not exist. The jurisdiction of the Circuit

Court had been invoked only because of the constitutional question. The court said:

"The question is, therefore, whether the appeal in this case is one comprehended within the classes of cases enumerated by section 5 of the act referred to. If it is, it must be taken to the Supreme Court, for it is only of such cases as remain after those enumerated in section 5 have been carved out of the whole body of appellate cases that the circuit courts of appeals have jurisdiction; and, as was said by Chief Justice Fuller in American Sugar Refining Co. v. City of New Orleans, 181 U. S. 277: 'Where it appears on the record, from plaintiff's own statement, in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the constitution or some law or treaty of the United States, (Water Co. v. Keyes, 96 U. S. 199; Blackburn v. Gold Min. Co., 175 U. S. 571; W. U. Tel. Co. v. Ann Harbor R. Co., 178 U. S. 239),' such a case falls within the exclusive appellate jurisdiction of the supreme court. Looking at the language of the act, we can see no good reason for thinking that the destination of the appeal is altered by the circumstance that other questions besides those enumerated in section 5 are comprehended in the controversy which the case presents. It is still, and none the less, a case in which a question arises of the character specified in designating what cases must go by appeal or writ of error to the supreme court. The appeal or writ of error in all cases, in which no question of the character described in section 5 is involved, goes to the circuit court of appeals under the operation of section 6, which expressly bounds the appellate jurisdiction of the latter court in that way."

At page 323, the court says:

"But if the original jurisdiction is founded *entirely* upon the ground of *diversity of citizenship*, and a constitutional question *becomes involved*, the appeal might go

to *either* court. If it should go to the supreme court, that court would, of course, decide the whole case; if to the court of appeals, that court might also decide the whole case, or certify the constitutional question to the supreme court, and, on receiving its answer, decide the case. If it should decide the constitutional question in the first instance, the unsuccessful party might apply for the writ of *certiorari* under the provision of the sixth section to correct any mistake made by the court of appeals upon the subject. Thus is accomplished the whole scheme by which congress intended to give to the supreme court, by one method or another, appellate power over all constitutional questions."

In

City of Owensboro v. Owensboro Water Co., 191 U. S. 358,

this court reversed the decree of the Circuit Court on a direct appeal. In the statement of the case this court makes the following statement:

"The city then took an appeal to circuit court of appeals. The appeal was dismissed on the ground that the jurisdiction of the circuit court having been invoked on a constitutional question, the appeal should have been taken directly to this court. 53 C. C. A. 146, 115 Fed. 318. The city then brought the case here from the circuit court."

Inasmuch, however, as the decree of the Court of Appeals, if it had jurisdiction, would be subject to review by this court in a case where the jurisdiction of the Circuit Court was founded both on diversity of citizenship and on the ground that a constitutional question was involved, and inasmuch as the Supreme Court would also have jurisdiction to review the decree of the Circuit Court on direct appeal therefrom, and as the Supreme

Court would have jurisdiction of the entire case, whichever court it came from, it is clear that there is just as much reason for denying the jurisdiction of the Circuit Court of Appeals in a case where jurisdiction of the Circuit Court is invoked both on the ground of diversity of citizenship and on the ground of a constitutional question being involved, as in a case where the jurisdiction of the Circuit Court is invoked solely on the ground of a constitutional question being involved.

In

Ill. Cent. R. R. Co. v. Adams, 180 U. S. 28,

diversity of citizenship existed. A temporary injunction was granted. An appeal was taken to the Circuit Court of Appeals. That court dismissed the appeal on the ground that a constitutional question was involved. (93 Fed., 852). The Circuit Court dismissed the suit for want of jurisdiction. An appeal was then taken to this court from the decree of the Circuit Court, and the question of jurisdiction certified. This court held that the Circuit Court had jurisdiction both on the ground of diverse citizenship and because of a question arising under the constitution of the United States.

In the case of

Wright v. McFarlane & Co., 122 Fed. 770,

the Circuit Court of Appeals for the Ninth Circuit dismissed an appeal for want of jurisdiction, and while it is true that in that case diversity of citizenship did not

exist, the opinion of the court shows that it would have made no difference had diversity of citizenship existed.

In commenting upon the case of Penn. Mutual Life Insurance Co. v. Austin, 168 U. S. 685, the court said:

"It will be observed that in this case the jurisdiction of the Circuit Court was invoked upon the ground of diverse citizenship of the parties to the action, but the bill disclosed a second ground of jurisdiction in the allegations claiming that the ordinances of the city and law of the state were in contravention of the Constitution of the United States. These allegations presented a case in which the jurisdiction of the Circuit Court was not entirely dependent upon the opposite parties to the suit or controversy being citizens of different states, and therefore, under section 5 of the Act of March 3, 1891, the Supreme Court had exclusive appellate jurisdiction."

After citing the case of American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, and giving the history of that case, the court proceeded:

"The Supreme Court was then petitioned for a writ of *certiorari* or *mandamus*, to compel the Circuit Court of Appeals to try the cause. The writ of *certiorari* was issued, the court holding that under sections 5 and 6 of the Act of March 3, 1891, the Circuit Courts of Appeals have power to review judgments of the Circuit Courts *when the original jurisdiction attaches solely by reason of diverse citizenship, notwithstanding the fact that constitutional questions may have arisen after the jurisdiction of the Circuit Court attached:* and that in all such cases the judgments of the Circuit Courts of Appeals are made final, and no review would be made by the Supreme Court, unless the constitutional questions involved therein were certified to that court by the Courts of Appeals. It was declared that the intention of the act was to distribute the appellate jurisdiction, and not in general to permit two appeals; that, in accordance with this intention, where

a case appeared from the pleadings to really and substantially involve a controversy as to a right depending upon the construction or application of the Constitution or some law or treaty of the United States, it fell strictly within the terms of section 5 of the Act, and the appellate jurisdiction of the Supreme Court in respect to such case was exclusive. The ruling was followed and approved in Huguley Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290, 295. See also *ex parte* Lennon, 150 U. S. 393, 399; Osborne v. Florida, 164 U. S. 650, 656.

"The decisions of the Supreme Court in these cases clearly establish the *line* of appellate jurisdiction between the Circuit Courts of Appeals and the Supreme Court of the United States where a constitutional question is involved, and determine that, where the jurisdiction of the Circuit Court is originally invoked upon the ground that the controversy is as to a right depending upon the construction or application of the Constitution or some law or treaty of the United States, then the appellate jurisdiction of the Supreme Court in respect to such case is exclusive, and the Circuit Courts of Appeals have no jurisdiction to hear and determine the appeal."

In

Howard v. U. S. to the use of Stewart, 184 U. S. 676,

diversity of citizenship existed. Jurisdiction also appeared in the Circuit Court because the suit was upon the bond of a Clerk of the United States Court. The case was one, therefore, which could not be brought directly to this court from the Circuit Court, because it involved the construction of a *statute* of the United States. The jurisdiction of the Circuit Court of Appeals, however, was not final, because the jurisdiction of the Circuit Court did not depend entirely upon diversity of citizenship. Mr. Justice Harlan was careful to point out that the case was

one which could not have been brought directly to this court. If the case had been one which could have been brought directly to this court, and had also been one of which the Circuit Court of Appeals was granted jurisdiction, then the decision of the Circuit Court of Appeals would have been final. At page 681, Mr. Justice Harlan said:

"It results that, although the petition shows a case of diverse citizenship, jurisdiction was not dependent entirely upon such citizenship. Jurisdiction was likewise invoked, and rightfully, upon Federal grounds. *And as the case was one which could not have been brought here directly from the circuit court, the final judgment of the circuit court of appeals could be reviewed in this court upon writ of error sued out by the defendants.*"

It is respectfully submitted that the foregoing authorities establish the following rules of construction of the Act of March 3, 1891, with reference to the jurisdiction of this Court and of the Circuit Courts of Appeals:

1. When the jurisdiction of the Circuit Court is invoked on the ground of diverse citizenship only, and the jurisdiction is not in issue in the Circuit Court, the Circuit Court of Appeals has final jurisdiction of all questions in the case, on an appeal being taken to that court.

2. When the jurisdiction of the Circuit Court is invoked upon the ground of diverse citizenship and also upon grounds other than those mentioned in section 5, and the jurisdiction of that Court is not in issue there, then the Court of Appeals has appellate jurisdiction and the Supreme Court has no direct appellate jurisdiction, but the decree of the Circuit Court of Appeals is not final, be-

cause the jurisdiction of the Circuit Court was not dependent entirely upon diverse citizenship.

3. When the jurisdiction of the Circuit Court is invoked, not on the ground of diverse citizenship nor upon any ground mentioned in section 5, but upon the ground that the suit arises under the laws of the United States, and the jurisdiction of the Circuit Court is not in issue there, then the Circuit Court of Appeals has appellate jurisdiction, and the Supreme Court has no direct appellate jurisdiction, but the decree of the Circuit Court of Appeals is not final.

4. When the jurisdiction of the Circuit Court is invoked solely upon the ground that the case is one arising under the 4th, 5th or 6th subdivision of section 5 of the Act of March 3, 1891, then the jurisdiction of the Supreme Court is exclusive, and the Circuit Court of Appeals is without jurisdiction.

5. When the jurisdiction of the Circuit Court is invoked both on the ground of diverse citizenship, and also upon one of the grounds mentioned in the 4th, 5th or 6th subdivision of section 5, then the case must be taken directly to the Supreme Court, and the Circuit Court of Appeals has no jurisdiction.

6. When the jurisdiction of the Circuit Court is invoked solely upon the ground of diversity of citizenship, and in the progress of the case a question arises which, if pleaded in the bill, would have given exclusive jurisdiction on appeal to the Supreme Court, then jurisdiction may be exercised directly by the Supreme Court, or by

the Circuit Court of Appeals. If an appeal in such case should be taken to the Circuit Court of Appeals, its decree would be final, because the jurisdiction of the Circuit Court was dependent entirely upon diversity of citizenship.

7. When the jurisdiction of the Circuit Court is in issue in that court, the Circuit Court of Appeals is without jurisdiction to decide that question.

This construction of the Act will accomplish the purpose of preventing two appeals where a direct appeal could have been taken to this court. In other words, the only case in which an appeal from the decree of the Circuit Court of Appeals to this court will lie as a matter of right, is when the question involved cannot be determined on a direct appeal from the decree of the Circuit Court to this Court. On the other hand, the Circuit Court of Appeals has no jurisdiction of a question which can be determined on a direct appeal to this Court unless the decree of the Circuit Court of Appeals will be final if an appeal be taken to that Court. To hold, however, that the mere existence of diversity of citizenship is sufficient to vest the Circuit Court of Appeals with jurisdiction of an appeal in a case where the jurisdiction of the Circuit Court was invoked upon constitutional grounds, as well as upon the ground of diversity of citizenship, is to frustrate what this Court has repeatedly decided was the express intention of the act, namely, to prevent two appeals.

We submit, therefore, that inasmuch as the jurisdiction of the Circuit Court was originally invoked on the

ground that the case was one involving the application of the Constitution of the United States, the Circuit Court of Appeals was without jurisdiction of the appeal from the decree of the Circuit Court.

IV.

ASSUMING, FOR THE SAKE OF ARGUMENT, THAT THE JURISDICTION OF THE CIRCUIT COURT WAS INVOKED SOLELY ON THE GROUND OF DIVERSITY OF CITIZENSHIP, STILL THE CIRCUIT COURT OF APPEALS HAD NO JURISDICTION TO DETERMINE THE QUESTION OF THE JURISDICTION OF THE CIRCUIT COURT, BECAUSE THE JURISDICTION OF THAT COURT WAS IN ISSUE IN THE CIRCUIT COURT.

The defendant, Marie Carrau, in the Circuit Court filed a motion to dismiss because the matters pleaded in the bill were "not cognizable in the Federal Court," and also another motion that the action abate "for the reason that this Court has no jurisdiction of the subject matter of this action." The jurisdiction of the Circuit Court, therefore, as a Federal Court, was in issue. It is true that that Court sustained the jurisdiction.

Section 5 of the Act of March 3, 1891, is as follows:

"That appeals or writs of error may be taken from the District Courts, or from the existing Circuits, direct to the Supreme Court, in the following cases:

"In any case in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision. * * *

"Sec. 6. That the Circuit Courts of Appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decisions in the District Court and the existing Circuit Courts in all cases other than those provided for in the preceding section of this Act, unless otherwise provided by law, and the judgments or decrees of the Circuit Courts of Appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States."

The Circuit Court of Appeals for the Second Circuit uniformly holds that it, while having jurisdiction of the case, has no jurisdiction to decide the question of jurisdiction when the jurisdiction of the Circuit Court was in issue in the Circuit Court.

In

Sun Printing & Pub. Ass'n v. Edwards, 194 U. S. 377,

the Circuit Court of Appeals for the Second Circuit certified to this Court the question of the jurisdiction of the Circuit Court. In the certificate the following statement was made:

"Upon examination of the record it appears that in addition to various questions as to the merits of the controversy which are presented by the assignments of error, the jurisdiction of the Circuit Court is in issue. Under Sections 5 and 6 of the Act of March 3, 1891, writs of error

in such cases are to be taken direct to the Supreme Court, *and the grant of appellate jurisdiction to the Circuit Courts of Appeal does not include such cases.*

"In accordance, therefore, with the practice indicated in Cincinnati, H. & D. Co. v. Thiebaud, 177 U. S. 615, and American Sugar Ref. Co. v. New Orleans, 181 U. S. 277, and followed by this Court in U. S. v. Lee Yen Tai, 51 C. C. A. 299, this Court elects to reserve judgment upon the other questions, and to certify the question of jurisdiction to the Supreme Court."

In answering the question of jurisdiction certified, this Court did not comment upon the statement of the Circuit Court of Appeals for the Second Circuit, to the effect that the determination of the question of jurisdiction where the jurisdiction of the Circuit Court was in issue, was not within the grant of appellate jurisdiction to the Circuit Courts of Appeal.

In

Fisheries Co. v. Lennen, 130 Fed. 533,

decided April 21, 1904, the Circuit Court of Appeals for the Second Circuit said:

"The first assignment is based upon the contention that the Circuit Court had no jurisdiction because the matter in demand does not exceed $2000. Under the construction adopted in this Circuit of the sixth section of the Evarts Act (Act March 3, 1891, c. 517, 26 Stat. 828 [U. S. Comp. St. 1901, p. 549]), the question of the jurisdiction of the court below is not before us for review. United States v. Lee Yen Tai, 113 Fed. 465, 51 C. C. A. 299."

In

U. S. v. Lee Yen Tai, 113 Fed. 465,

the Circuit Court of Appeals for the Second Circuit, in considering the question of its jurisdiction to decide a constitutional question, said:

"The Circuit Court of Appeals has no jurisdiction in any case in which the constitutionality of any law of the United States or the validity or construction of any treaty is drawn in question. In such cases an appeal or writ of error lies directly to the Supreme Court, and the Circuit Court of Appeals can only exercise appellate jurisdiction in cases other than those. Authority, however, is given the Circuit Court of Appeals in every 'subject within its appellate jurisdiction' to certify to the Supreme Court any question of law concerning which it desires the instruction of that Court 'for its proper decision.' Act of March 3, 1891, Sec. 6. The Supreme Court in several cases has held that, although a case which has been brought to the Circuit Court of Appeals by an appeal or writ of error may involve a question which that Court has no jurisdiction to entertain, it may, nevertheless, if the case also involves other questions, determine those questions, and certify to the Supreme Court the question which it may not entertain. U. S. v. Jahn, 155 U. S. 109; Carter v. Roberts, 177 U. S. 496."

After quoting from the Carter case, the Circuit Court of Appeals proceeded:

"This language is relied upon by counsel for the appellant as meaning that the Circuit Court of Appeals may in deciding the whole case decide the constitutional question, or, as in this case, a question involving the construction of a treaty. We do not regard it as intended to bear that meaning, and, as we read the language, it means simply that the Circuit Court of Appeals may decide the whole case by affirming or reversing the decision under review

without passing upon the constitutional or treaty question, or, if it sees fit, may reserve judgment and certify that question."

In

St. Louis Cotton Compress Co. v. American Cotton Co., 125 Fed. 196,

the Circuit Court of Appeals for the Eighth Circuit dismissed an appeal for want of jurisdiction, and said:

"Act of March 3, 1891, c. 517, 26 Stat. 826, which created the Circuit Courts of Appeals, provides in section 5 (26 Stat. 827), that 'appeals or writs of error may be taken from * * * the existing Circuit Courts directly to the Supreme Court * * * in any case in which the jurisdiction of the Court is in issue,' and in section 6 (26 Stat. 828), that the Circuit Courts of Appeals 'shall exercise appellate jurisdiction to review by appeal or writ of error final decision in the * * * existing Circuit Courts in all cases other than those provided for in the preceding section of this act, unless otherwise provided by law.' If, therefore, a writ of error could have been taken from the Supreme Court directly to the Circuit Court to review the question here presented under section 5 in this suit, this is not one of the other cases of which this court is given jurisdiction."

At page 201, the Court said:

"The second objection to the dismissal of the writ is that the Circuit Courts of Appeals are given jurisdiction by section 6 of the Act creating them to review all jurisdictional questions which arise in the Circuit and District Courts of the United States in cases in which their jurisdiction is based solely on diversity of citizenship. A careful reading of section 6, however, discloses no such grant of power. Upon this subject that section provides only that the Circuit Courts of Appeals 'shall exercise appellate

jurisdiction to review by appeal or writ of error final decision in the * * * existing Circuit Courts in all cases other than those provided for in the preceding section of this Act, unless otherwise provided by law, and the judgments or decrees of the Circuit Courts of Appeals shall be final * * * in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States or citizens of different States.' *But it is only in cases not provided for by the preceding section that the Circuit Courts of Appeals are given appellate jurisdiction, and no case in which jurisdiction of the Circuit Court is in issue falls in the class of cases not provided for by section* 5."

At page 262, the Court said:

"Section 6 does provide that in cases in which the jurisdiction of the Circuit Court is founded on diversity of citizenship the judgments and decrees of the Circuit Courts of Appeals shall be final. *But this provision in no way limits the jurisdiction of the Supreme Court under section* 5, *nor does it enlarge the appellate jurisdiction of the courts of Appeals.* * * *

"The cases of American Sugar Refining Co. v. New Orleans, 181 U. S. 277, 281, and Ayres v. Polsdorfer, 187 U. S. 585, do not lead to a different result. The question there considered was the jurisdiction of the Circuit Courts of Appeals to hear and determine constitutional questions arising in cases in which the jurisdiction of the Circuit Courts was founded on diversity of citizenship. The jurisdiction of the Circuit Courts over the subject matters and the parties to the suits was not challenged or in issue in those cases, and, as the Supreme Court well said in Ayres v. Polsdorfer, at page 595, 187 U. S., 'as to such questions other rules apply than those we have expressed in this opinion.'"

In this connection it should be borne in mind that the real question in the case of

McLish v. Roff, 141 U. S. 661,

which was the first decision rendered by this Court construing the Act of March 3, 1891, establishing the Circuit Courts of Appeals, was whether the question of the jurisdiction of the Circuit Court could be certified to this Court before final judgment. That was the only question involved in that case.

In the case of

U. S. v. Jahn, 155 U. S. 109,

the jurisdiction of the Circuit Court was *not in issue in that Court*. The case, therefore, did not fall within the first subdivision of section 5. It was not a case, therefore, in which a direct appeal could have been taken to this Court on the jurisdictional question. The Circuit Court of Appeals, therefore, had undoubted jurisdiction to determine the question of jurisdiction, because in the Circuit Court the case contained none of the questions provided for by section 5. Notwithstanding that fact, this Court said:

"It is conceded that the United States assigned errors on the merits, as well as the error under consideration, and as the question of *jurisdiction* lay at the threshold, and the *intent* of the Act of March 3, 1891, was *that that question should be determined by this Court*, the Circuit Court of Appeals properly suspended any consideration of the case upon the merits until that question could be determined upon certificate."

As stated, in the Jahn case, the jurisdiction of the Circuit Court *was not in issue in the Circuit Court*. The

first subdivision of section 5 of the Act of March 3, 1891, specifically provides that a direct appeal may be taken to this Court in all cases where the jurisdiction of the Circuit Court is in issue. The grant of appellate jurisdiction to the Circuit Court of Appeals is in other cases than those provided for in section 5, and, as stated in

St. Louis Cotton Compress Co. v. American Cotton Co., 125 Fed. 196,

"*But it is only in cases not provided for by the preceding section that the Circuit Courts of Appeals are given appellate jurisdiction, and no case in which jurisdiction of the Circuit Court is in issue falls in the class of cases not provided for by section 5.*"

It is, therefore, respectfully submitted that the Circuit Court of Appeals had no jurisdiction to determine that the Circuit Court had no jurisdiction, when the jurisdiction of the Circuit Court *was in issue in the Circuit Court.*

We submit, therefore, that as the Circuit Court of Appeals had no jurisdiction of the question of the jurisdiction of the Circuit Court, and as that was the only alleged error properly assigned, the decree of the Circuit Court of Appeals should be reversed with directions to dismiss the appeal of Marie Carrau.

V.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON HAD JURISDICTION OF THE SUBJECT MATTER OF THE SUIT, AND OF ALL NECESSARY PARTIES.

A.

WHEN A PROCEEDING INTER PARTES CAN BE MAINTAINED IN A STATE COURT, BY WHATEVER NAME THE STATE COURT MAY BE CALLED, FOR THE ANNULMENT OF A WILL AND ITS PROBATE, A SUIT FOR THE SAME RELIEF MAY BE MAINTAINED IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE SAME STATE, IF THE OHER JURISDICTIONAL REQUISITES EXIST.

The Circuit Court of Appeals for the Ninth Circuit, in an opinion delivered by Judge Knowles and concurred in by Mr. Justice McKenna, then Circuit Judge, said, in the case of

Richardson v. Green, 61 Fed. 423, 428:

"It should be observed also that when it is customary for such state courts to hear and determine such equitable suits, a United States Court, under proper conditions, may hear them. *It is not necessary that a statute should exist authorizing the same.* The suit in the county court of Oregon in such matters is not authorized directly by any statute, but is a customary exercise of jurisdiction. * * *

"In the Broderick will case *it was admitted* if a state by statute authorized the bringing of a suit to declare a will void in its courts of law or equity, the same could be maintained in a proper case in a Federal court."

Again, in the same opinion, the court said:

"Here it will be seen that if a suit is essentially a suit of a *civil nature, for equitable relief*, and it is customary to prosecute the same in *any* state court where the action arose, whether the same is a county court *or a probate court* or a District or Circuit Court, the proper Federal Court will have concurrent jurisdiction of the same with such state courts, where the amount is sufficient and the parties are citizens of different states as prescribed by the United States statutes."

In the concurring opinion, Judge McKenna, at page 435, said:

"A suit, however, may be maintained in the county court, to declare the will void and revoke its probate. Clark's Heirs v. Ellis, 9 Or. 132, and cases *supra*. The nature of this suit is not precisely defined by the decisions, but it is certainly *inter partes*, and seems to be within the doctrine declared in Ellis v. Davis, 109 U. S., 496, 497; 3 Sup. Ct. 327. This *remedy* existing in the Oregon courts, it could be exercised by the United States Circuit Court."

The Circuit Court of Appeals therefore affirmed the decree of the Circuit Court for the District of Oregon, adjudging, in a suit brought by the heirs of a decedent, that an alleged will was forged and its probate fraudulently obtained, and enjoining the persons claiming thereunder from setting up any title to the estate of the deceased under the will and its probate.

The defendants applied to the Supreme Court for a writ of *certiorari*, upon the single ground that there was no law in the State of Oregon authorizing the maintenance of a suit in the courts of the state to annul a will and its probate; that a proceeding to annul a will and its probate was in effect one requiring the re-probate of the will; that it could be entertained by the county court only in the exercise of probate jurisdiction, and that for that reason jurisdiction did not exist in the Circuit Court of the United States for the District of Oregon to entertain a suit for the annulment of a will and its probate. (Petition for writ of *certiorari* in Richardson v. Green, p. 4.) Counsel for the petitioners in that case said, at page 1 of their brief:

"The Circuit Court of the United States for the District of Oregon is without jurisdiction to decree a will invalid and cancel the same, none of the courts of the State of Oregon having jurisdiction to entertain a suit between parties for such relief."

The application for the writ of *certiorari* was denied by this Court.

Richardson v. Green, 159 U. S. 264.

THE DENIAL OF THE WRIT OF CERTIORARI WHERE THE QUESTION SOUGHT TO BE REVIEWED WAS THE JURISDICTION OF THE CIRCUIT COURT OF THE UNITED STATES TO ENTERTAIN THE SUIT, MUST BE TAKEN AS AN AFFIRMANCE BY THIS COURT OF THE JURISDICTION OF THAT COURT.

This is the view which has always been taken of that case.

In

Wart v. Wart, 117 Fed. 766,

the court, in following Richardson v. Green as establishing the jurisdiction of the Circuit Courts of the United States to entertain such suits, said:

"In Richardson v. Green, 9 C. C. A., 565, 61 Fed. 423, this question is discussed at length, the conclusion reached being that under the laws of Oregon a proceeding to contest the validity of a will could be instituted after the probate thereof, and that if the adversary parties were citizens of different states and the amount involved was sufficient to meet the requirements of the judiciary act, a court of the United States could take jurisdiction over such a controversy. *An application was made to the Supreme Court for the purpose of bringing this case by means of a writ of certiorari before that court, but the application was denied. Richardson v. Green*, 159 U. S., 264; 15 Sup. Ct. 1042, 40 L. Ed. 142. *The denial of the writ when the question involved was that of jurisdiction, must be taken to be in effect an approval of the ruling of the Court of Appeals.*"

The court, therefore, held that the *statutory right* given by section 3296 of the Code of Iowa to contest a will and its probate, was a right enforceable in the courts of the United States when the other jurisdictional requisites existed. The court said:

"*A proceeding thus brought to contest the validity of a will presents a controversy between adversary parties, of which a court of the United States may take jurisdiction, provided the requisite amount is involved and a diversity of citizenship exists between the litigant parties.*"

In

Williams v. Crabb, 117 Fed. 193,

the Circuit Court of Appeals for the Seventh Circuit, in asserting the jurisdiction of the Circuit Court to entertain a suit to set aside a will and its probate, said, in following the decision in Richardson v. Green:

"*It is well settled that rights and remedies, legal or equitable, provided by the statutes of the states to be pursued in the state courts may be enforced and administered in the Federal Courts*, and that the terms 'law' and 'equity' as used in the Constitution, although intended to mark a distinction between the two systems of jurisprudence as known and practiced at the time of its adoption, do not restrict the jurisdiction conferred by it to the very rights and remedies then recognized and employed, but embrace as well *not only rights newly created by the statutes of the state, but new forms of remedies to be administered in the courts of the United States according to the nature of the case. A state cannot, by its legislature, confer a substantive right or remedy in the way of a suit inter partes, upon its own citizens, that will not be available to the citizens of the other states; nor can it by any device restrict such right or remedy thus made available to enforcement in its own courts, the conditions of citizenship being such that they would otherwise be enforceable in the Federal Courts.* By any other view it would be in the power of a state by legislation to deprive citizens of other states either of the new right or remedy given by the state statute, or of the forum granted by the Federal Constitution and laws. The citizen of another state cannot be compelled to make such an election, or to accept a remedy upon condition that he forego the constitutional forum to which he would otherwise be entitled."

Certiorari was applied for and denied in this case.

Crabb v. Williams, 187 U. S. 645.

In

Sawyer v. White, 122 Fed. 223,

the Circuit Court of Appeals for the Eighth Circuit had before it the question of the jurisdiction of the Circuit Court to set aside a will and its probate on the ground that the execution of the will had been procured by undue influence. The court said:

"The action to contest the validity of this will *is a statutory proceeding*, under sections 4622, 4623, 1 Rev. St. Mo., 1899, p. 1102, which provide that any person interested in the probate of any will may contest its validity by a petition to the Circuit Court of the State, filed within five years after the will is probated. * * *

"*As the parties to this action were citizens of different states the Federal Court had jurisdiction to hear and determine this issue under the familiar rule that rights created and remedies provided by the statutes of a state to be pursued in the state court may be enforced and administered in the national courts either at law, in equity or in admiralty, as the nature of the rights or remedies may require.* Darragh v. H. Wetter Mfg. Co., 78 Fed. 7, 14, 23, C. C. A. 609, 616; Gaines v. Fuentes, 92 U. S. 10, 20, 23, L. Ed. 524; Richardson v. Green, 9 C. C. A. 565, 571, 578, 61 Fed. 423, 429, 435; Brodhead v. Shoemaker (C. C.) 44 Fed. 518, 11 L. R. A. 567; in re Stutsman County (C. C.) 88 Fed. 337, 341; Ellis v. Davis, 109 U. S. 485, 497, 3 Sup. Ct. 327, 27 L. Ed. 1006; Railway Co. v. Whitton, 13 Wall. 270, 278, 287, 20 L. Ed. 571; Cummings v. Bank, 101 U. S. 153, 157, 25 L. Ed. 903; Davis v. Gray, 16 Wall. 203, 221, 21 L. Ed. 447; Broderick's Will, 21 Wall. 503, 520, 22 L. Ed. 599; Gormley v. Clark, 134 U. S. 338, 348, 10 Sup. Ct., 554, 33 L. Ed. 909; Cowley v. Railroad Co., 159 U. S. 569, 582, 16 Sup. Ct. 127, 40 L. Ed. 263; National Surety Co. v. State Bank of Humboldt (C. C. A.) 120 Fed. 593."

Barber Asphalt Paving Co. v. Morris, Judge, 132 Fed. 945.

It is clear that the courts of the United States, other than the present Circuit Court of Appeals for the Ninth Circuit, understood when they followed the decision in Richardson v. Green, 61 Fed. 423, that that decision held that when a proceeding could be maintained in the courts of a State to annul a will and its probate, a suit to enforce the same rights could be maintained in the Circuit Court of the United States sitting in such State, and that it was immaterial whether the right to maintain such a proceeding in the courts of the State was created by *a customary exercise of jurisdiction, or by statute.* This is certain, because the jurisdiction upheld in Wart v. Wart, 117 Fed. 766, was founded upon section 3296 of the Code of Iowa; in Sawyer v. White, 122 Fed. 223, the jurisdiction upheld was founded upon sections 4622, 4623, I Rev. St. Mo. 1899, p. 1102; and in Williams v. Crabb, the jurisdiction was founded upon section 7 of chapter 148, Rev. St. of Ill.

In

Richardson v. Green, 61 Fed. 423,

the claim was made that the Circuit Court of the United States for the District of Oregon had no jurisdiction to entertain such a suit, *because there was no statute in Oregon authorizing a court of the state to entertain such a suit.* At page 428, the court said:

"It is not *necessary* that a statute should exist authorizing the same. * * * In the Broderick Will case *it was admitted* if a *state statute authorized* the bringing of a suit to declare a will void in its courts of law or equity, the same could be maintained in a proper case in the Federal Court."

It was *conceded* that if there *was a statute* of the state authorizing such a suit, then the Circuit Court of the United States had concurrent jurisdiction with the courts of the state. It was held by the court that if it was customary for the courts of the state to entertain such suits, then, even if there were no statute, the Circuit Court of the United States had *concurrent jurisdiction.*

In the case at bar the Circuit Court of Appeals holds that *because there is a statute* which authorizes a proceeding *inter partes* in the Superior Courts of the State of Washington exercising general jurisdiction, the Circuit Court of the United States for the District of Washington *is excluded from exercising concurrent jurisdiction with the state court.*

In Oregon the only court of the State having jurisdiction to entertain a contest of a will admitted to probate was a county court.

It is important, therefore, to determine the exact jurisdiction of the county court of Oregon.

"The county court shall have the *jurisdiction pertaining to probate courts* and Boards of County Commissioners, and such other powers and duties *and such civil jurisdiction, not exceeding the amount of value of* $500.00, and such criminal jurisdiction not extending to death or imprisonment in the penitentiary, as may be prescribed by law."

Article 7, section 12, Constitution of Oregon.

"The county court is created by the organic law of the state (Art. 7 Const.), and its organization is provided

for *and its jurisdiction limited and defined by such organic law* and the provisions of this title. * * *"

Sec. 893 Hill's Annotated Laws of Oregon.

Sec. 867 Deady's General Laws of Oregon.

"The county court has jurisdiction, but not exclusive, of *actions at law* and all proceedings therein and connected therewith, where the claim or subject of the controversy *does not exceed the value of five hundred dollars* * * *."

Sec. 894 Hill; 868 Deady.

"The county court *has exclusive jurisdiction in the first instance pertaining to a court of probate*, that is

1. *To take proof of wills.*

2. *To grant and revoke letters testamentary, of administration*, or of guardianship * * *."

Sec. 895 Hill; 869 Deady.

It thus appears that not only was there no grant to the county court of Oregon of equity jurisdiction, but all civil jurisdiction granted to the county court, outside of its probate jurisdiction, was expressly limited to five hundred dollars, and that jurisdiction was only conceded to it in actions at law. It is plain, therefore, that the authority for upholding the jurisdiction of the Circuit Court of the United States for the District of Oregon, in the case of Richardson v. Green, was not based upon the proposition that the county court could entertain a suit either at law or in equity to annul a will and its probate. *The authority for upholding the jurisdiction of the Circuit Court, in that case, rested solely on the ground that the proceeding was*

inter partes. This clearly appears from the cases cited by Judge McKenna to establish the character of the proceeding customarily instituted in the county courts of Oregon.

In

Heirs of Clark v. Ellis, 9 Ore. 128,

the Supreme Court of Oregon said:

"The chief objection made upon the argument of the demurrer was that the county court had no jurisdiction of the subject matter, that the jurisdiction to annul wills *is not a matter pertaining to probate*, and is not vested in the county court either by the Constitution or by statute, and that original jurisdiction of such causes belongs to the Circuit Court. * * *

"The jurisdiction of the county court in a proper proceeding to set aside a will and to revoke letters testamentary, is not questioned. * * * *The re-probate* required when the validity of the will is attacked, the issue formed in every such proceeding, of which the party propounding the will has the *onus probandi, is a subject matter of the same jurisdiction as the probate of a will of which the county court has the exclusive jurisdiction in the first instance under the statute above cited.*"

In

Kieley v. McGlynn, (Broderick's Will), 21 Wall. 503,

this Court affirmed a decree which dismissed a bill filed in the Circuit Court of the United States for the District of California, instituted to set aside a will and its probate. The statutory time for attacking the will and its probate in the probate court had elapsed long prior to

the institution of the suit. Complainants were not in possession of the real estate which they claimed to have inherited. The defendants were in possession. It is perfectly clear from the opinion, that had there been no question of the statute of limitations, and had the statute of 1862 of California been in force at the time of the probating of the will, which authorized the District Courts of California to entertain proceedings to set aside wills and their probate on the ground of fraud, the jurisdiction of the Circuit Court of the United States would have been sustained. That such is the case clearly appears from the following language of the opinion:

"The statute of 1862 has been referred to, which gives to the District Courts of California power to set aside a will obtained by fraud or undue influence, or a forged will, and any probate obtained by fraud, concealment or perjury. Whilst it is true that alterations in the jurisdiction of the state courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States so long as the equitable rights themselves remain, *yet an enlargement of equitable rights may be administered by the Circuit Courts as well as by the courts of the state. And this is probably a case in which an enlargement of equitable rights is effected, although presented in the form of a remedial proceeding.* Indeed, much of *equitable jurisdiction* consists of better and more effective *remedies* for attaining the rights of parties. But the statute referred to cannot affect this suit, inasmuch as the statute of limitations would still apply in full force, and would present a perfect bar to the suit."

Gaines v. Fuentes, 92 U. S. 10.

This court having before it the question whether a Circuit Court of the United States sitting in equity in the State of Louisiana had jurisdiction to entertain a suit to annul a forged will and its fraudulent probate, said:

"The suit in the parish court is not a proceeding to establish a will, but to annul it as a muniment of title, and to limit the operation of the decree admitting it to probate. *It is in all essential particulars a suit for equitable relief*—to cancel an instrument alleged to be void, and to restrain the enforcement of a decree alleged to have been obtained upon false and insufficient testimony. *There are no separate equity courts in Louisiana, and suits for special relief of the nature here sought are not there designated suits in equity, but they are none the less essentially such suits, and if by the law obtaining in the state, customary or statutory, they can be maintained in a state court, whatever designation that court may bear, we think they may be maintained by original process in a Federal Court, where the parties are on the one side citizens of Louisiana and on the other citizens of other states.*"

Ellis v. Davis, 109 U. S. 485, 496.

"Where provision is made by the laws of a state, as is the case in many, for trying the question of the validity of a will already admitted to probate by a litigation between parties in which that is the sole question, with the effect, if the judgment shall be in the negative, of rendering the probate void for all purposes as between the parties and those in privity with them, it may be that the courts of the United States have jurisdiction under existing provisions of law, to administer the remedy and to establish the right in a case where the controversy is wholly between citizens of different states. The judicial power of the United States extends, by the terms of the Constitution, 'to controversies between citizens of different states,' and on the supposition, which is not admitted, that this embraces only such as arise in cases 'in law and equity,' it does not necessarily exclude those which may involve the exercise of jurisdiction in reference to the proof of validity of wills."

Byers v. McAuley, 149 U. S. 608.

A suit was instituted by persons claiming to be the heirs at law and next of kin of a decedent, against the

administrator of the estate with the will annexed. It was claimed by the complainants that one Mary McAuley left an instrument in writing in the following words:

"By request of my dear brother, my house on Duquesne Way is to be sold at my death and the proceeds to be divided between the Home of the Friendless and the Home for Protestant Destitute Women."

This instrument had been admitted to probate as the will of Mary McAuley, and letters of administration with the will annexed had been issued to one Byers. Byers proceeded with the administration of the estate until it was ready for distribution. The day before the hearing of the application for distribution, a bill was filed in the Circuit Court of the United States for the Western District of Pennsylvania, by citizens of states other than Pennsylvania. The bill set forth the death of Mary McAuley, that there were two classes of claimants to the estate, first and second cousins, that the so-called will was null and void, and that there was a large amount of personal estate in the hands of the administrator. The prayer was that the will and the probate be declared void and of no effect, that the administrator be enjoined from collecting the rents, that he be ordered to make an account of the assets, and that the assets be distributed among the complainants and all parties legally entitled thereto. The administrator filed a plea setting up the proceedings in the Orphans' Court. The plea was overruled. The Circuit Court entered a decree in accordance with the prayer of the bill. This court reversed so much of the decree of the Circuit Court as undertook to determine the rights of parties, as between themselves, who were citizens of the same state,

but affirmed so much of the decree of the Circuit Court as adjudicated the rights of persons possessing the requisite diversity of citizenship. The court held that complainants had no interest in the real estate mentioned in the instrument which had been probated as the will of Mary McAuley. This holding, however, was based upon the ground that the instrument, though void as a will, was valid as a declaration of trust.

If the decision of the Court of Appeals in the case at bar is correct, then this court, in the case of Byers v. McAuley, would have ordered that cause remanded and dismissed. It would not have affirmed so much of the decree of the Circuit Court as adjudicated the rights of parties before the court who possessed the requisite diversity of citizenship.

Corley v. Northern Pacific Railroad Company, 159 U. S. 569, 582.

A judgment had been entered upon a stipulation made by the attorneys of appellant. Thereafter, without taking any proceeding in the original suit, appellant instituted an original proceeding in the District Court of the Territory of Washington, to set aside the judgment in the former case, on the ground of fraud. The proceeding begun in the territorial court, was afterwards proceeded with in the Superior Court of the State of Washington for Spokane County, and then removed to the Circuit Court of the United States, which entered a decree dismissing it. The Circuit Court held that appellant should have applied to the state court by petition or motion in the original case, and should not have brought an independent suit; that

after the case had been removed from the state court to the Circuit Court of the United States it was treated as a suit in equity, and that a court of the United States sitting in equity could not afford appellant any relief. This court, in reversing the decree of the Circuit Court, said:

"Although the *statute of a state* or territory may not restrict or limit the equitable jurisdiction of the Federal Courts, and may not directly enlarge such jurisdiction, *it may establish new rights or privileges* which the *Federal Courts may enforce on their equity* or admiralty side, precisely as they may enforce a new right of action given by statute on their common law side." (Citing Broderick's Will, 21 Wall. 503.)

Bardon v. Land & River Improvement Company, 157 U. S. 327.

"We remarked in Gormley v. Clark, 134 U. S. 338, 348, that while the rule was well settled that remedies in the courts of the United States at common law or in equity, according to the essential character of the case, are uncontrolled in that particular by the practice of the state courts, yet an enlargement of equitable rights by state statutes may be administered by the Circuit Courts of the United States as well as by the courts of the state, *and when the case is one of a remedial proceeding, essentially of an equitable character, there can be no objection to the exercise of the jurisdiction.* Kieley v. McGlynn, 21 Wall. 503, 520." (Broderick's Case.)

Smythe v. Ames, 169 U. S. 466, 517.

"A party, by going into a National Court, does not, this court has said, lose any right or appropriate remedy of which he might have availed himself in the state courts of the same locality; the wise policy of the Constitution gives him a choice of tribunals."

Darragh v. Wetter Mfg. Co., 78 Fed. 7, 14.

"Rights created or provided by the statutes of the states to be pursued in the state courts, may be enforced and administered in the Federal Courts, either at law, in equity or in admiralty, as the nature of the new rights may require."

Sheffield Furnace Co. v. Witherow, 149 U. S. 574, 579.

"It may well be affirmed that a state, by prescribing an action at law to enforce even statutory rights, cannot oust a Federal Court sitting in equity of its jurisdiction to enforce such rights, provided they are of an equitable nature."

Leighton v. Young, 52 Fed. 439, 442.

"Where a state statute creates a right and prescribes a mode of proceeding to enforce it in the state courts, the courts of the United States in that state will enforce the right, but not always in the mode prescribed for enforcing it in the state courts."

We now ask the attention of the Court to a review of the principal cases relied on by counsel for Marie Carrau upon the proposition that the Circuit Court had no jurisdiction of this suit.

Bedford Quarries Co. vs. Tomlinson, 95 Fed. 208.

The Court said:

"The bill, no doubt, states a good cause of action at law against the decedent, and this is all. No reason is given why equity should take cognizance of the case. For aught that appears, the complainants have an adequate remedy at law for the collection of their debt. There are no allegations tending to show fraud or concealment on the part of the executors, or misappropriation of property, making a bill for discovery necessary."

In the suit at bar no action at law could be maintained by complainants. No action can be maintained in ejectment against an administrator in the State of Washington. It is plain, therefore, that the case has no application to this suit.

Walker v. Brown, 63 Fed. 204.

This case simply holds that a purely legal demand cannot be enforced in equity because it is against a dead man's estate. It recognizes and approves of the rule laid down in Byers v. McAuley, 149 U. S. 608.

Wahl v. Franz, 100 Fed. 680,

is a case which reviews almost all the authorities on the subject of the jurisdiction of a Circuit Court of the United States to entertain a suit for the annulment of a will. The decision of the majority of the Court holds that under the statutes of Arkansas, where the case arose, no Court other than the Probate Court had jurisdiction to entertain a contest of a will; that the right of appeal to the Circuit Court was supervisory, and that the proceeding on appeal could not, therefore, be removed from the State Court to the Circuit Court of the United States. The dissenting opinion of Judge Sanborn is certainly a very strong argument against the conclusion which the majority reached. The decision of the majority was finally based upon the proposition that the *State Circuit Court* of Arkansas had no *original jurisdiction* to entertain a contest of the will; and that the *appeal* from the Probate Court to the Circuit Court was but a continuation of the proceedings in the Probate Court, and therefore the Circuit Court of the United States could not acquire jurisdiction of that appeal

by a removal. It is not an authority in the case at bar, for the reason that the Superior Court of Washington is the only State Court in the state having original jurisdiction. The opinion of Judge Sanborn reviews the authority cited against the jurisdiction of the Circuit Court to entertain a suit in equity for the annulment of a will, and he concludes as follows:

"Where the statutes of a State create the right to institute in its Courts of general jurisdiction, either by appeal or by original process, and to maintain and try according to the course and practice of the common law or according to the practice in equity, a suit between opposing parties to avoid a will and the probate thereof for fraud, undue influence, or illegality in its making, the Federal Court in that state has original jurisdiction of a like suit between citizens of different states involving the necessary amount."

The case of

In re Cilley, 58 Fed. 977,

was a case where it was sought to remove *a probate appeal* to the Circuit Court of the United States on the ground of local prejudice. The court held that a proceeding to establish a will in the Probate Court where the local courts had no jurisdiction of such matter, could not be removed to the Federal Court. The Court distinguished the case from Byers v. McAuley. It will be observed that the proceeding sought to be removed was an appeal from a Probate Court, and not a proceeding instituted in a State Court of general jurisdiction.

Ellis v. Davis, 109 U. S. 485,

is a decision which is clearly favorable to the exercise of jurisdiction in the present case, as the quotation therefrom above cited shows.

Simmons v. Saul, 138 U. S. 439,

does not touch the question in the present suit. The question there presented is as to whether the judgment of a Court of competent jurisdiction could be collaterally attacked by a suit in the Circuit Court of the United States. The Court held that the parish court had exclusive jurisdiction over the administration of vacant and intestate successions. The conclusion was reached that the Court whose judgment was sought to be attacked had jurisdiction, and that its decree was binding.

Broderick's Will, 21 Wall. 203.

This case does not conflict with the cases holding that where a proceeding to contest a will can be maintained in a court of general jurisdiction, such a proceeding can be maintained in a Circuit Court of the United States by a suit in equity where the requisite diversity of citizenship and the requisite amount exists, and there is no adequate remedy at law. On the contrary, it is perfectly clear, from the opinion, that the views expressed on the question of jurisdiction would have been different had the act of 1862, authorizing the *District Court* to entertain a suit to set aside a will, been in force at the time the probate proceedings were had.

The case is commented upon in the case of

Gaines v. Fuentes, 92 U. S. 10, 21,

where, after sustaining the jurisdiction of the Circuit Court, Mr. Justice Field, in delivering the opinion, said, at page 20:

"Nor is there anything in the decisions of this Court in the case of Gaines v. New Orleans, reported in the 6th of Wallace, or the case of Broderick's Will, reported in the 21st of Wallace, which militates against these views. In Gaines v. New Orleans, this Court only held that the probate could not be collaterally attacked; and that, until revoked, it was conclusive of the existence of the will and its contents. There is no intimation given that a direct action to annul the will and restrain a decree admitting it to probate might not be maintained in a Federal as well as in a State Court, if jurisdiction of the parties was once rightfully obtained. * * *

"There are, it is true, in several decisions of this Court, expressions of opinion that the Federal Courts have no probate jurisdiction, referring particularly to the establishment of wills; and such is undoubtedly the case under the existing legislation of Congress. The reason lies in the nature of the proceeding to probate a will as one *in rem*, which does not necessarily involve any controversy between parties; indeed, in the majority of instances, no such controversy exists. In its initiation all persons are cited to appear, whether of the State where the will is offered, or of other States. From its nature, and from the want of parties, or the fact that all the world are parties, the proceeding is not within the designation of cases at law or in equity between parties of different states, of which the federal courts have concurrent jurisdiction with the State Courts under the Judiciary Act; *but whenever a controversy in a suit between such parties arises respecting the validity or construction of a will, or the enforcement of a decree admitting it to probate, there is no more reason why the federal courts should not take jurisdiction of the case than there is that they should not take jurisdiction of any other controversy between the parties.*"

The case of

Reed v. Reed, 31 Fed. 49,

is one where the Court held that the institution of the proceedings in the court of common pleas was in the nature of an appeal. At page 51, the Court said:

"The case sought to be removed seems to be proceedings under a special statute of the state of Ohio, and classed with special remedies under the statute, in which the whole proceedings are directed by the statute, and substantially make the common pleas court an *Appellate Court, or an assistant to the Probate Court* on the probate of wills and settlement of estates. The Probate Courts of the counties have the exclusive jurisdiction for the probate of wills."

It also appears from the case that when proceedings were filed in the common pleas, the Probate Court was required to transmit to the common pleas the will, the testimony, and all papers relating thereto, and a copy of the final judgment was to be certified from the common pleas to the Probate Court. It is plain, therefore, that the proceeding in the common pleas court was in the nature of an appeal from the Probate Court, and was not an original proceeding in the common pleas court.

In re Aspinwall's Estate, 83 Fed. 852,

is a case where it was sought to remove an appeal taken to the Orphans' Court from the decision of the Registrar of Wills. The Court, holding that it had no jurisdiction on removal, said:

"Nor is this conclusion at variance with the rulings in Gaines v. Fuentes, 92 U. S. 18, and Ellis v. Davis, 109 U. S. 485, that, where by the law of a State suit may be maintained in a State Court to annul the probate of a will, such a suit may be maintained in a Federal Court,

where the parties on the one side and the other are citizens of different states. The proceeding upon this appeal is not such an annuling suit, nor is it analogous to such a suit. It is a part of the probate proceedings for the establishment of the contested instrument."

Oakley v. Taylor, 64 Fed. 245,

is based upon the proposition that the Circuit Court of the United States for the Eastern District of Missouri had *no original jurisdiction to set aside an instrument admitted to probate* by the Probate Court as the will of one Spear. The decision is based upon the proposition *that the jurisdiction exercised by the State Circuit Court* was *not original jurisdiction*, but was in the nature of *appellate, derivative* or *superintending jurisdiction over the Probate Court.*

The case of

Blythe v. Hinckley, 84 Fed. 228,

is one where it was sought to quiet the title of complainants to certain real property in California. The defendants claimed under one Florence Blythe Hinckley. The plaintiffs claimed that Florence was an alien, incapable of inheriting, and that the Superior Court of San Francisco was without jurisdiction to adjudge that she was capable of inheriting as an heir at law of Thomas H. Blythe. The decree of the Superior Court in favor of Florence had been affirmed. The property had been turned over to Florence Blythe Hinckley, and the Court held that there was a plain and adequate remedy at law. There is nothing in the case in support of the proposition that the Circuit Court had not jurisdiction to determine the

heirship of the complainants, and that the pretended nuncupative will under which Marie Carrau claims is ineffectual for any purpose.

Counsel for Marie Carrau admit that where a State statute allows a State Court of general jurisdiction to exercise jurisdiction to annul a will, that a Circuit Court of the United States can exercise like jurisdiction, but they ask the question whether any statute of Washington can be pointed to, giving the courts of equity jurisdiction of probate matters. It is not necessary that such jurisdiction should be given to the state court by statute. It is sufficient that such jurisdiction is customarily exercised. In Washington it is given by the Constitution.

In

Broderick's Case, *supra*,

this court, speaking of the right of action provided by the act of 1862 of California, for the annulment of a will, said:

"This is probably a case in which an enlargement of *equitable rights is effected, although presented in the form of a remedial proceeding.* Indeed, much of equitable jurisdiction consists of better and more effective remedies for attaining the rights of parties."

By reference to the Act of 1862, referred to by the court in its opinion in this case, it will be found that the State of California had provided as follows:

"The District Court shall have full power in all cases to set aside a will obtained by fraud or undue influence,

and to declare null and void any paper purporting to be a last will and testament, upon the ground of fraud or forgery, and to set aside a decree of any probate court admitting to probate any supposed will, when such decree has been obtained by fraud, concealment or perjury, and to establish a will lost or destroyed."

Hittell's Laws of California, Sec. 2605.
Gaines v. Fuentes, supra.

Suits to annul and cancel wills on the ground of fraud are not in Louisiana designated *suits in equity*, but this court in that case said:

"*But they are none the less essentially such suits.*"

The statute of Washington providing for the contest of a will is as follows:

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issues shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will."

Pierce's Washington Code, Sec. 2395 (Ball. Code, Sec. 6110).

"Upon the filing of the petition referred to in the next preceeding section a citation shall be issued to the executors who have taken upon them the execution of the will,

or to the administrators with the will annexed, and to all legatees named in the will residing in the territory (state), or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted."

Pierce's Washington Code, Sec. 2396 (Ball. Code, Sec. 6111).

These sections of the statute create an equitable right in the form of a remedial proceeding. The Supreme Court of Washington has so decided.

"*Proceedings to contest a will are in their nature equitable, and trial by jury of issues of fact therein is not a matter of right.*"

Clayson v. Clayson, 26 Wash. 253.

In the State of Washington there are no Probate Courts. The Superior Courts of the state are courts of general jurisdiction. They are vested with all original jurisdiction not exclusively vested in some other court. Section 6, Article IV, of the State Constitution is as follows:

"The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property * * * of all matters of probate * * * the Superior Court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court."

Section 10, Article XXVII of the State Constitution is as follows:

"When the State is admitted into the Union, and the Superior Courts in the respective counties organized, the books, records, papers and proceedings of the Probate Court in each county, and all causes and matters of administration pending therein shall, upon the expiration of the terms of office of the Probate Judges on the second Monday in January, 1891, pass into the jurisdiction and the possession of the Superior Court of the same county created by this constitution, and the said court shall proceed to final judgment or decree, order or other determination in the several matters and causes as the territorial Probate Court might have done if this constitution had not been adopted. And until the expiration of the term of office of the Probate Judges, such Probate Judges shall perform the duties now imposed upon them by the laws of the territory. The Superior Courts shall have appellate and revisory jurisdiction over the decisions of the Probate Courts as now provided by law, until such latter courts expire by limitation."

"The constitution does not make the Superior Courts Probate Courts. On the contrary, it vests the Superior Courts with jurisdiction 'of all matters of probate,' hence the court is not shorn of its general powers simply because the case before it may be one *which was cognizable formerly in a court of probate.* It possesses in every case and at all times its powers as a court of superior and general jurisdiction, and among these is the power to hear and determine the question to whom a bequest made by a decedent rightfully belongs. *The statute, therefore, can neither add to nor take away the power, and it is immaterial to inquire whether or not one conferring such power is in existence.*"

Reformed Presbyterian Church v. McMillan, 31 Wash. 643.

"When the constitution was adopted, the Superior Court was vested with general jurisdiction, such as was exercised by the territorial district courts, and also with jurisdiction in probate matters, and the Probate Court, as an independent tribunal, was abolished."

Ball et al. v. Clothier et al., 34 Wash. 299.

"In this state we have no Probate Court, properly speaking, as distinguished from the courts that entertain jurisdiction of other matters. * * * Matters pertaining to probate are referred to what is called 'Probate procedure,' as distinguished from what is denominated 'Civil' or 'Criminal' procedure, but when the court sitting in a probate proceeding discovers in a petition a statement of facts which forms the basis of a controversy, we see no reason why it may not settle the issues thereunder, when an appearance has been made thereto, and then proceed to try it in a proper manner *as any other civil cause.*"

Filley v. Murphy, 30 Wash. 1, 5.

"It is not a law court, nor an equity court, nor a Probate Court, but it is all the time the Superior Court of general jurisdiction, empowered to try *all these differently termed causes under the title of a civil action*, and when it has once acquired jurisdiction *of that civil action*, it may proceed, in an orderly way, to determine equitable, legal or probate controversies."

Browder v. Phinney, 30 Wash. 74.

In

State ex rel. Stratton v. Tallman, 25 Wash. 295,

the Supreme Court of the state, speaking of the same alleged will which is involved in this suit when the Attorney General of the state sought to attack its probate by motion, said:

"There is a plain procedure which is speedy and adequate, pointed out in Sec. 6110 Ball. Code, by which issues may be properly made up and tried and determined, respecting all questions affecting the regularity of the execution or of the validity of the will, *and the Superior Court entertaining such a suit* may fully protect such rights in the estate by such *stay of proceedings in the procedure in probate* as may be necessary or effective."

In

Higgins v. Nethery, 30 Wash. 239,

the language of this court is:

"This *action* was begun by the appellants on February 15, 1901, to set aside the will upon the grounds that the deceased did not make it, that the same is void because the testator at the time the will was made was not of sound mind. * * * *On the trial the court found the facts against the contestants*, and dismissed the *action*. * * * When the cause was called for trial, appellants (*plaintiffs below*) requested the court to impose the burden of proof upon the *defendant*. * * * When the record shows, as it does in this case, that the court had jurisdiction, and all the facts appear to show *prima facie* a valid will, the order of the court admitting the will to probate must have some force. For that reason the burden must be upon the *plaintiffs* to show that the will was invalid by reason of the facts alleged, namely, that the testator did not execute the will, or that he was not of sound mind, or was under undue influence at the time he made it. The order admitting the will to probate is not *conclusive* of the facts necessary to support it, but when the facts appear of record they must be taken as true until the contrary is shown."

These decisions of the Supreme Court of the State of Washington demonstrate that the proceeding to contest a will and its probate is a suit in a court of general jurisdiction.

In the opinion of the Court of Appeals in this suit, the court said that the Supreme Court of the State, in denominating the proceeding to contest a will, provided by the state statute, a "*suit*," manifestly used an inapt expression (838).

In

Weston v. City Council of Charleston, 2 Pet. 449,

this court, speaking by Chief Justice Marshall, in defining the word "suit," said:

"The term is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him. *The modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit.*"

In

Traction Co. v. Mining Co., 196 U. S. 239,

this court said, at page 250:

"In the more recent case of Smith v. Adams, 130 U. S. 167, 173, Mr. Justice Field, speaking for the court and referring to the clauses of the Constitution and the statutes relating to the judicial power and the courts of the United States, said: 'By those terms are intended the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress or punishment of wrongs. Whenever the claim or contention of a party takes such a form that the judicial power is capable of acting upon it, then it has become a case or controversy.'"

At page 255, speaking of the jurisdiction of the Circuit Court, the court said:

"In the exercise of that power a Circuit Court of the United States, sitting within the limits of a state and hav-

ing jurisdiction of the parties, is, for every practical purpose, a court of that State. Its function, under such circumstances, is to enforce the rights of parties according to the law of the State, taking care, always, as the state courts must take care, not to infringe any right secured by the Constitution and the laws of the United States."

At page 256, the court said:

"Was the case, as it was in the County Court, a suit in which there was a controversy between corporations of different States? If so, the right of removal was perfect under the act of 1887, 1888."

It is respectfully submitted that it would be hard to provide a proceeding which would have more of the characteristics of a suit than the proceeding provided by the statute of Washington, and in determining that it was a "suit" the Supreme Court of the state not only followed the rule announced by this court, but as the highest authority in the state, announced a rule for the courts of the state in construing a statute of the state. The Supreme Court of the state, in designating the proceeding a "suit," was not deciding that it was a "suit" over which the National Courts would have jurisdiction. It was only deciding in construing the state statute that the proceding was a "suit" to be entertained by the Superior Courts of the state in the exercise of their general jurisdiction. That determination is conclusive. As, then, this suit could be maintained in the courts of the state, it can be maintained in the Circuit Court of the United States sitting in the same state, the other jurisdictional requirements existing.

In

Woerner on Administration (2nd Ed.), Sec. 156, p. 357,

the law is thus stated:

"While the probate of a will *ex parte* is *in rem*, and, not being between parties, cannot be removed to the Federal Courts, yet where such will is contested in pursuance of statutory provisions, and becomes a suit *inter partes*, residing in different states, the Federal Courts take jurisdiction as they would in any other controversy between the parties."

Brodhead v. Shoemaker, 44 Fed. 518.
Everhart v. Everhart, 34 Fed. 82.
Kirby v. R. R. Co., 106 Fed. 551.
McDonald v. Jordan, 178 U. S. 229.

If, in Richardson v. Green, the Circuit Court of the United States for the District of Oregon had jurisdiction in equity of a suit to annul a will and its probate, although the only court of the state in which a contest might be instituted had no jurisdiction in equity and none at law where the amount involved exceeded five hundred dollars, then the jurisdiction of the Circuit Court in that case was founded upon the proposition that an equitable right had been created by a state custom, and a court of the United States could enforce that right in equity, regardless of the remedy existing in the courts of the state, and regardless of the character of the court of the state in which it might be enforced, provided the right to be enforced was one which was to be enforced *inter partes*.

Ex parte McNeil, 13 Wall. 236, 243.

"A state law cannot give jurisdiction to any Federal Court, but that is not a question in this case. A state law

may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper federal tribunal, whether it be a court of equity, of admiralty, or of common law. The statute in such cases does not *confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy.* This principle may be laid down as axiomatic in our national jurisprudence. A party forfeits nothing by going into a federal tribunal."

If the customary exercise of jurisdiction by a county court in Oregon in the exercise of probate jurisdiction over a proceeding *inter partes* to annul a will and its probate, was sufficient to authorize the Circuit Court of the United States in Oregon, sitting in equity, to take jurisdiction of a suit to annul a will and its probate, how can it be claimed that the customary constitutional and statutory exercise of jurisdiction by the Superior Courts of the State of Washington over like proceedings, can deprive the Circuit Courts of the United States sitting in Washington of jurisdiction to entertain a similar suit?

If the statute of Washington and the decisions of the Supreme Court of the state do not make it clear that the contest of a will and its probate is a proceeding *inter partes*, and is a suit of such a character as authorizes a Circuit Court of the United States to take jurisdiction when instituted by parties possessing the requisite diversity of citizenship, and where the amount involved is sufficient, the decision in

Richardson v. Green, 61 Fed. 423,

would not have been approved by this court.

Richardson v. Green, 159 U. S. 264.

We submit that it is not competent for the State of Washington to provide a remedy by which a will, after its probate, can be attacked by a proceeding *inter partes* in a court of general jurisdiction, that the procedure should be of an *equitable nature,* that it should be a *suit, a civil action,* but that a party claiming such remedy must resort exclusively to courts of the state or give up his right to redress, although, by reason of his citizenship,—

"The wise policy of the Constitution gives him a choice of tribunals."

We submit that no case can be found denying the jurisdiction of a Circuit Court of the United States over a suit to annul a will and its probate, instituted by parties possessing the requisite diversity of citizenship, where the amount involved is sufficient for jurisdictional purposes, when by the law of the state where the Circuit Court of the United States is held, a proceeding *inter partes*, other than by an appeal, can be maintained in a State Court of general jurisdiction to obtain the same relief.

B.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, UNDER THE ALLEGATIONS OF THE BILL, HAD JURISDICTION IN EQUITY TO ENTERTAIN THE SUIT TO SET ASIDE THE WILL ON THE GROUND OF FRAUD, AND TO ENJOIN MARIE CARRAU FROM ENJOYING THE INEQUITABLE ADVANTAGE OB-

TAINED BY THE DECREE PROBATING THE SAME, BECAUSE PROCURED BY FRAUD, AND WHICH, IF ALLOWED TO STAND, WOULD CONSTITUTE MUNIMENTS OF TITLE.

In

Cowley v. Northern Pacific R. R. Co., 159 U. S. 569, 580,

this court distinguished the cases of

Gaines v. Fuentes, 92 U. S. 10,

and

Barrow v. Hunton, 99 U. S. 80,

and said:

"The distinction between the two cases above cited is that in the latter case the judgment was impeached for a matter of form, and in the former case for the *falsity and insufficiency of the testimony* upon which the will was admitted to probate; in other words, *for a fraud connected with the probating of the will.*"

In

Marshall v. Holmes, 141 U. S. 590,

this court cited Gaines v. Fuentes, Barrow v. Hunton, Johnson v. Waters, *supra*, and Arrowsmith v. Gleason, 129 U. S. 86, and said:

"These authorities would seem *to place beyond question the jurisdiction of the Circuit Court to take cognizance of the present suit, which is none the less an original, independent suit because it relates to judgments obtained in the court of another jurisdiction.* While it cannot require the state court itself to set aside or vacate the judg-

ments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in the state court. It would simply take from him the benefit of judgments obtained by fraud."

That a court of the United States has jurisdiction of a suit to enjoin a person from availing himself of a judgment obtained by fraud, based upon false evidence and rendered *ex parte* is clear.

Howard v. Cordora, 177 U. S. 609.
Graver v. Faurot, 76 Fed. 257.
Arrowsmith v. Gleason, 129 U. S. 86.
Marshall v. Holmes, 141 U. S. 590.
Cooper v. Newell, 173 U. S. 155.
Huntington v. Laidley, 176 U. S. 668.
National Surety Co. v. State Bank, 120 Fed. 593.
McNeil v. McNeil, 78 Fed. 834.
Davenport v. Moore, 74 Fed. 945.
Johnson v. Waters, 111 U. S. 640.

C.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON HAD JURISDICTION OF THE SUIT BETWEEN PARTIES TO THE RECORD, TO CONSTRUE THE ALLEGED NUNCUPATIVE WILL AND DETERMINE IT INVALID

ON ITS FACE, ON THE GROUND THAT THE SECTION OF THE ACT OF THE TERRITORY OF WASHINGTON UNDER WHICH ITS VALIDITY IS ASSERTED, IS VOID, BECAUSE IN CONFLICT WITH SECTION 6 OF THE ORGANIC ACT OF THE TERRITORY ENTITLED "AN ACT TO ESTABLISH THE TERRITORIAL GOVERNMENT OF WASHINGTON."

By Section 6, Article IV of the Constitution of Washington, above cited, it was provided:

"The Superior Court shall have original jurisdiction in all cases in equity and in all cases at law, which involve the title or possession of real property."

Under the law of Washington, approved March 20th, 1895 (Laws of Wash., p. 197 *supra*), the real estate of John Sullivan vested immediately on his death in the complainants. Under the general law his personal property, upon the qualification of an administrator of his estate, vested in the administrator in trust for complainants, unless it passed under the alleged nuncupative will and the alleged decree of probate to Marie Carran. The bill specifically alleged that under the law of the State of Washington a nuncupative will, where the estate bequeathed exceeded the value of two hundred dollars, was invalid, and that even if valid, it could not convey real estate (8, 9).

The bill set out the alleged nuncupative will, purporting on its face to dispose of "property and personal effects worth many thousands of dollars," and alleged that the

real estate in Seattle of which the deceased died siezed exceeded the value of three hundred thousand dollars (7).

The bill also set out the petition of the defendant Carrau for the probate of the alleged will, in which she stated that:

"The testamentary words were thereafter reduced to writing, which writing accompanies this petition. * * * That the decedent was a bachelor, and left no widow, heirs or next of kin, so far as known to your petitioner, and that the decedent left personal property of the value of fifty thousand dollars, and real estate in said County of King of the probable value of four hundred thousand dollars.

Wherefore, petitioner prays that said will be admitted to probate" (7).

The defendant claimed that the entire estate passed to her under the alleged will.

The bill specifically prayed as follows:

"That the said pretended nuncupative will * * * be adjudged null and void and of no force and effect whatsoever, *and in the event that said will should not be adjudged null and void, the same should be adjudged not to pass title to any real estate of the estate of John Sullivan, deceased, nor any of the rents, issues and profits issuing out of said real estate since the death of said John Sullivan, deceased*" (10).

The bill, therefore, stated facts clearly showing, that even assuming that the decree of probate rendered without jurisdiction and procured by fraud, conclusively established the execution of the alleged nuncupative will, still the title to the personalty was held by the administrator

in trust for complainants, and the title to the realty passed upon his death to complainants, for the following reasons:

1st. Because the alleged will was invalid, in that it bequeathed an estate exceeding in value two hundred dollars.

2nd. Because even if valid, it could not convey real estate, and as to the real estate the deceased died intestate.

The facts alleged in the bill, therefore, invoked the jurisdiction of the Circuit Court of the United States for the District of Washington to construe the alleged will, and determine:

1st. Its validity.

2nd. If valid, whether or not real estate was conveyed by it.

There has never been any doubt that the matter of the construction of wills is one over which courts of equity and courts of law have jurisdiction. There has never been any doubt that the construction of wills is not a matter of probate jurisdiction, although a probate court may by statute be vested with jurisdiction to construe wills. The power to construe wills was, therefore, a matter of which the Circuit Courts of the United States were by the Constitution and laws of the United States vested with jurisdiction. A state statute expressly providing that the probate court should have the sole and exclusive jurisdiction to construe wills could not deprive the Circuit Courts of the United States of the jurisdiction to construe wills

vested in them by the Constitution and laws of the United States.

If the legislature of the Territory of Washington had undertaken to enact a law which conferred upon the probate courts of the territory, jurisdiction in equity and at law, to construe wills, in order to determine the title to real estate, such act would have been in conflict with the Act of Congress, because it would have clothed the probate court with other than probate powers, and would have vested in that court jurisdiction in matters of chancery and at common law, which the Act of Congress provided should be vested in the Supreme and District Courts of the territory.

Revised Statutes U. S., Sections 1866-1868.
Ferris v. Higley, 20 Wall. 375.
Chadwick v. Chadwick, 6 Montana, 566.
Locknane v. Martin, McCahon, 60.
Dewey v. Dyer, McCahon, 77.
Maybur, Graham et al. v. Kelly, 1 Kan. 116.
The People v. Durell, 1 Idaho 30.
Moore v. Koubly, 1 Idaho 55.

It is not unreasonable to assume, therefore, that the framers of the Constitution of Washington, when they vested the Superior Court of the state with—

"original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property * * * (and) of all matters of probate,"

used those terms as they had been defined by this court and by the Supreme Courts of the different territories, and

thereby vested the Superior Court with power in the exercise of its jurisdiction in equity and at law, to construe wills and to determine the title to and possession of real property thereunder.

The power to construe wills is not included within the grant of jurisdiction "of all matters of probate," except as such power is incidental to the exercise of probate jurisdiction.

The question whether title to property passes under a will to a legatee or devisee, or by reason of the invalidity of the will passes to the heir at law or next of kin of the decedent, does not call for the exercise of jurisdiction in matters of probate, but requires the exercise of jurisdiction in chancery or at law.

"The power to determine directly and conclusively the construction to be given to wills is not committed to the court of probate, nor to the Superior Court sitting as an appellate court of probate. Such a power involves the right to try and finally determine disputed titles to property, real and personal, and this is not given to those courts."

In re Chapman's Est., 70 Conn. 363.

"If the will be properly executed and proved, it must be admitted to probate, although it contain not a single provision capable of execution or valid under the law, hence the probate does not establish the validity of any of its provisions. This is to be determined by the courts of construction when any question arises requiring their interposition."

1 *Woerner on Administration*, Sec. 228, p. 502.

"The admission of a will to probate, either in common

or solemn form, does not preclude inquiry into the validity of one or more of the provisions therein contained, or of their proper construction or legal effect. It simply establishes the fact that a will has been made according to the form prescribed by the statute."

Burkett v. Whittemore, 36 S. C. 428.

"The probate court has the power, upon proper proceedings, to make a decree of distribution, * * * but it has no power in this state to construe a will,—to determine its effect upon the distribution of the estate,—or to adjudicate between the heirs and the residuary legatees. Such power is given to probate courts in some states, but in our system it is reserved to the law and equity courts. * * * In this case there is a question whether the school district can take under the will, and whether, if they can take, they have not by their action rejected the legacy. This is a question between the school district and the heirs, which can be determined only by the court of equity or law jurisdiction, upon proper pleadings, notice and hearing. Not even the Supreme Court of Probate upon appeal can exercise the equity powers conferred upon the Supreme Judicial Court."

Hanscom v. Marston, 82 Me. 288.

"The legal effect of the will or its various provisions, its construction and operation, do not come in question, and cannot be passed upon on an application to admit the will to probate. *The probate court does not assume to determine the validity of a will*, but only that the instrument presented for probate was executed as his last will and testament by the testator in the manner prescribed by statute, and that he was legally competent to make a will."

Graham v. Birch, 47 Minn. 171.

"In the second petition the question presented to the Probate Court was whether or not the property therein specified was, for the purpose of its distribution under the will, real estate or personal property, as under the terms

of the will it was to be distributed differently according to which of the above classes of property it belonged, but the determination of this question was also within the domain of equity jurisdiction. The inquiry whether or not this was to be deemed real estate or personal property for the purpose of distribution according to the provisions of the will, should be addressed to a court of chancery."

Chadwick v. Chadwick, 6 Montana, 566.

The next position of counsel for defendant is that the probate of the will is conclusive, and therefore the will itself must be regarded as valid until it or the probate thereof be set aside by proper proceedings. * * * The probate of the will under the statute in force at the time, had the effect to establish its execution and rendered it admissible as an instrument of evidence in the courts of the state, and nothing more. (Code 1851, Secs. 1297, 1300). It did not establish the testamentary character of the instrument and give validity to a title based upon it. The effect of the will and its interpretation, whereon titles under it rested, were not determined in the proceedings for its probate."

Fallon v. Chidester, 46 Iowa, 588.

"The court was asked, in effect, to determine the rights of the parties claiming under the will, and not merely to determine whether it was an instrument made and published under such circumstances and with such legal forms as to constitute it the last will and testament of the testator and entitle it to probate as such. * * * That was a question of construction of the contents of the will, and not of the sufficiency of its execution and publication. The latter being established, it was not for that court to say whether any title passed to the parties claiming under its provisions."

Lusk v. Lewis, 32 Miss. 297.

"The validity of the will under which the respondent claims title must be determined, according to the laws of Iowa, where the land is situated. * * * By the law of

Iowa, as interpreted by the Surpeme Court of the State, the will was revoked by the birth of an heir after it was executed. * * * The probate of the will in Iowa, while it settles the question of its due execution, does not conclusively establish its validity, or determine its force and effect when title to real estate is claimed under it. * * * It follows that as to the land in controversy there is no valid will, and the same is to be disposed of according to the Iowa law of descent."

Ware v. Wisner, 50 Fed. 310.

Boman v. Boman, 49 Fed. 329.

The statute of Washington is very similar to the statute of Iowa.

"Every will proved according to the provisions of this chapter, recorded and certified by the Judge of the Superior Court and attested by the seal of said Court, may be read as evidence without any further proof."

Pierce's Code, Sec. 2392. (Ball. Code, 6107.)

"The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the Clerk in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven."

Pierce's Code, Sec. 2393. (Ball. Code, Sec. 6108.)

All that the statute dispensed with, if the will was legally probated, was the proof of the will. The decree of probate is not an adjudication of the validity of the will. The questions of the validity of the will and of the effect of the will are matters for the courts exercising jurisdiction in chancery and at law.

The construction of wills being a matter over which courts of equity and law both exercise jurisdiction, the power to construe wills was by the constitution of the state vested in the Superior Court by the grant of jurisdiction in equity and at law. It was not vested in the Superior Court by virtue of the grant of jurisdiction "in matters of probate." It is clear, therefore, that in determining the validity of the alleged will, and if valid whether real estate passed under it, the suit, if complainants had instituted one in the state court, would have been entertained by the state court under its jurisdiction in matters of law and equity, and not by the Superior Court in the exercise of jurisdiction over matters of probate.

The courts of the United States have repeatedly exercised their jurisdiction either on the law side or in equity, to construe wills and determine the rights of parties thereunder. If the construction of a will should be involved in an action of ejectment, then the court on its law side would construe the will and determine whether the title of the deceased passed to his heir by operation of law, or vested in the devisee claiming under the will. If the case presented to the court should be one in which there was no adequate remedy at law in the courts of the United States, then those courts would exercise jurisdiction in equity to construe the will.

Hardenbergh v. Ray, 151 U. S. 112.
Potter v. Couch, 141 U. S. 296.
Colton v. Colton, 127 U. S. 300.
Jones v. Habersham, 107 U. S. 174.
McDuffie v. Montgomery, 128 Fed. 105.

Sherman v. American Cong. Ass'n, 113 Fed. 609.
Waterfield v. Rice, 111 Fed. 625.
Handley v. Palmer, 103 Fed. 39.

Possession of the entire estate was in the defendant O'Brien as administrator and as trustee either for the defendant Marie Carrau under the alleged will if it was valid, and if it conveyed real estate and was probated, or, if it was invalid, or if it did not convey real estate, or if it had not been legally probated, in trust for these complainants as heirs at law and next of kin of the deceased. The entire estate was claimed, on the one hand, by these complainants as such heirs at law and next of kin of the deceased, and on the other by the defendant Marie Carrau under the alleged will and the pretended decree of probate.

It is clear that as to the personal property a court of equity had jurisdiction of a suit by the next of kin against the administrator and the beneficiary under the alleged will to construe the alleged will and determine whether it was valid or not, and if invalid, to have it decreed that the personalty was held in trust by the administrator for such next of kin. It is clear that if the court obtained jurisdiction for the purpose of establishing the equitable right of the next of kin to the personal estate, it had jurisdiction to adjust the whole controversy, and to determine the title to the real estate and whether it vested in the claimant under the alleged will, or in the complainants as heirs at law of the deceased.

In

Wager v. Wager, 89 N. Y. 162,

the court said:

"The plaintiffs are next of kin and heirs at law of William Wager, deceased, and claim to be entitled to share in his residuary estate, which, as they allege, is undisposed of by his will. The defendant Eliza H. Wager is the widow and executrix of the testator, and has taken possession of all the property and estate which he had at the time of his death, and claims to own and hold the same in her own right, to the exclusion of the plaintiff and other heirs and next of kin, and claims that by said will the whole of said property and estate belongs to her as devisee and legatee, absolutely. * * *

The complaint was dismissed in the court below, on the sole ground, as stated in the conclusion of law of the trial judge, that the court had not jurisdiction to declare and adjudge the construction of the will of said William Wager, deceased, in this action.

This conclusion cannot, in our judgment, be sustained. * * * The jurisdiction of equity over trusts gives it authority to construe wills whenever necessary to control or guide the action of a trustee, and there can be no clearer case for the exercise of that jurisdiction than where the trustee denies the existence of the trust and claims the right to appropriate the trust property to his own use. An executor is always a trustee of the personal property of the testator, and can be called upon to account therefor as such in a court of equity, even though no express trust be created by the will. So far as the property is effectually disposed of by the will, the executor holds it in trust for the legatees or beneficiaries, and according to the law of this country, if there is any part of such property or any interest therein not effectually disposed of by the will, he holds it in trust for those who are entitled to it under the statute of distributions. Bowers v. Smith, 10 Paige, 193. 1 Wms. Exrs. 294, 2 Story Eq. Jur. Sec. 1208. Hayes v. Jackson, 6 Mass. 153.

Any person claiming an interest in the personal estate of the testator, either as legatee under the will or as entitled to it under the statute of distributions, may file a bill against the executors to settle the construction and ascertain the validity of the provisions of the will so far as the

complainant's interest is concerned, and to enable him to obtain from the executors such portions of the estate as he is either legally or equitably entitled to. Bowers v. Smith, 10 Paige, 200.

As all trusts are the peculiar objects of equitable cognizance, courts of equity will compel the executor to perform his testamentary trusts with propriety. Hence, although in those courts as well as in courts of law, the seal of the court of probate is conclusive evidence of the *factum* of a will, an equitable jurisdiction has arisen of construing the will in order to enforce a proper performance of the trusts of the executor. The courts of equity are consequently sometimes called courts of construction, in contradistinction to the courts of probate. 1 Wms. Exrs. 294. Hayes v. Hayes, 48 N. H. 219. Redf. Wills, 495."

In

Read et al. v. Williams et al., 125 N. Y. 560, 560,

the court court said:

"The jurisdiction of a court of equity to entertain an action in behalf of the next of kin of a testator for the construction of a will disposing of personal estate, where the disposition made by the testator is claimed to be invalid or inoperative for any cause, was asserted by the chancellor, in Bowers v. Smith, 10 Paige, 200, and was maintained in Wager v. Wager, 89 N. Y. 161, and in Holland v. Alcock, 108 N. Y. 312 (16 N. E. Rep. 305). It is true that in such cases the next of kin claim in hostility to the will, but the executors, in case the disposition made by the testator is invalid or cannot take effect, hold the personalty upon a resulting trust for those entitled under the statute of distributions, and thereby the jurisdiction to bring an equitable action for construction and to have the resulting trust declared by the court, attaches as incident to the jurisdiction of equity over trusts."

If the defendant, Marie Carrau, had been in possession of the real estate, and complainants had instituted in the

Circuit Court of the United States a suit in ejectment, the jurisdiction of the Circuit Court of the United States as a court of law would have been beyond question, and in that suit the Circuit Court of the United States would have had presented to it and would have determined the validity of the will, and if valid, whether the title and right to possession of the real estate was in the complainants as heirs at law of the deceased, or whether it was in the defendant Carrau by reason of the will. The defendant Carrau, however, was not in possession of any of the property. An action of ejectment, therefore, could not be maintained against her, nor could a court of law accord complainants any relief.

The relief which complainants sought was injunctive relief, enjoining the defendant Carrau from getting possession of the estate from the trustee, who held it in trust for the complainants. The facts alleged in the bill made the suit one of equitable cognizance from every standpoint.

THE ONLY TEST OF WHETHER A CIRCUIT COURT OF THE UNITED STATES HAS JURISDICTION IN EQUITY, AS DISTINGUISHED FROM JURISDICTION AT LAW, DEPENDS ON WHETHER THE REMEDY AT LAW IS AS COMPLETE AND ADEQUATE AS THAT WHICH CAN BE AFFORDED BY A COURT OF EQUITY. IF IT IS NOT, THEN THE COURT HAS JURISDICTION IN EQUITY.

Rich v. Braxton, 158 U. S. 378.
Gormley v. Clark, 134 U. S. 338.
Allen v. Hanks, 136 U. S. 301-310.

Tyler v. Savage, 143 U. S. 79-95.
Kilbourne v. Sunderland, 130 U. S 505-514.
Boyce's Executors v. Grundy, 3 Peters, 210-215.
Walla Walla v. Walla Walla Water Company, 172 U. S. 1-12.
Bardon v. Land Co., 157 U. S. 330.
Smyth v. Ames, 169 U. S. 516.
Sheffield Furnace Co. v. Witherow, 149 U. S. 574-579.
Hudson v. Randolph, 66 Fed. 217.
Waite v. O'Neil, 72 Fed. 356.

In

McConihay v. Wright, 121 U. S. 201,

a suit was brought in the Circuit Court of the United States in equity to quiet the title of complainant to a tract of land in West Virginia. The West Virginia code allowed an action of ejectment to be maintained against one claiming title to or an interest in land, although not in possession. The jurisdiction of the Circuit Court of the United States, in equity, was objected to on the ground that the complainant had a plain and adequate remedy at law under the West Virginia statute. This court, considering the objection, said:

"Admitting this to be so, it nevertheless cannot have the effect to oust the jurisdiction in equity of courts of the United States as previously established."

THE CIRCUIT COURT OF THE UNITED STATES HAD JURISDICTION OF THE SUIT AS ONE TO QUIET THE TITLE OF COMPLAINANTS AGAINST

THE CLAIM OF THE DEFENDANT MARIE CARRAU UNDER THE ALLEGED WILL AND THE FRAUDULENT DECREE OF PROBATE.

Neither complainants nor the defendant Carrau were in possession. The administrator held the property as trustee for the true owners. A decree in favor of complainants, quieting their title as against the claim of the defendant Carrau, would enable complainants to petition the state court to direct the surrender of the property by the administrator to them without interference from the defendant Marie Carrau.

AS A SUIT TO QUIET THE TITLE OF COMPLAINANTS, THEREFORE, THE CIRCUIT COURT OF THE UNITED STATES HAD JURISDICTION IN EQUITY.

Where the statute of a state authorizes a suit to quiet title to be maintained by one not in possession of land against another claiming title to the land, who is also out of possession, a Circuit Court of the United States in equity has jurisdiction of a suit to quiet the title. The right given by the state statute will be enforced by the Circuit Court of the United States, and as the defendant is not in possession of the land, and therefore ejectment would not lie, the remedy is in equity.

Dick v. Foraker, 155 U. S. 404.
Roberts v. Northern Pacific Railroad, 158 U. S. 30.
Wehrman v. Conklin, 155 U. S. 324.
Missouri, K. T. & T. Co. v. Krumseig, 172 U. S. 351.
Holland v. Challen, 110 U. S. 19.

Whitehead v. Shattuck, 138 U. S. 146.
Frost v. Spitley, 121 U. S. 552.
Moore v. Steinbach, 127 U. S. 70.
Reynolds v. Crawfordsville Bank, 112 U. S. 405, 410.
Harding v. Guice, 80 Fed. 162.
Southern Pacific v. Stanley, 49 Fed. 263, 265.

The statute of the State of Washington authorizes a suit to quiet title to real estate to be maintained by one not in possession of real estate against another also out of possession, but who asserts title thereto, even though the title asserted be void.

Kinsman v. Spokane, 20 Wash. 119.
Rohrer v. Snyder, 29 Wash. 199, 203.
Jackson v. Tatebo, 3 Wash. 456, 462.
Bloomingdale v. Weil, 29 Wash. 611, 634.

A NUNCUPATIVE WILL, UNDER THE LAW OF WASHINGTON, IS INVALID WHERE THE ESTATE BEQUEATHED EXCEEDS TWO HUNDRED DOLLARS.

Section 6 of the Organic Act of the Territory of Washington, approved March 2, 1853 (U. S. Stats. at Large, Vol. 10 pp. 172, 175), is as follows:

"Section 6. * * * To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, *every law shall embrace but one object, and that shall be expressed in the title.*"

The Territorial Legislature, at its first session, in 1854, enacted a statute entitled:

"An Act establishing probate courts for the Territory of Washington."

Laws of 1854, Territory of Washington, p. 309.

At the same session, the legislature enacted a statute entitled:

"An Act relating to Wills."

Laws of 1854, p. 312.

Section 23 of this act provides:

"No nuncupative will shall be good when the estate bequeathed *exceeds the value of two hundred dollars, nor* unless the same be proven by two witnesses. * * *"

No change was attempted to be made in the amount of an estate which could be bequeathed by nuncupative will, until November 11, 1873, when the legislature of the Territory, by an act approved on that date, entitled:

"An Act *defining the jurisdiction and practice* in the probate courts of Washington Territory,"

omitted the word "nor" after the words "two hundred dollars" and before the word "unless," and thereby, if the repeal was valid, removed the limitation on the amount of an estate which might be bequeathed by nuncupative will.

Laws of 1873, pp. 252, 259, making the section read as follows:

"Section 33. No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred

dollars (————), unless the same be proved by two witnesses. * * *"

Section 33 of the Act of March 11, 1873, was re-enacted by the Territorial Legislature by an act approved December, 1, 1881, entitled:

"An Act *defining the jurisdiction and practice* in the probate courts of Washington Territory."

Pierce's Code of Washington, p. 355.

There is nothing in the title of the act of November 11, 1873, nor in the title of the act of December 1, 1881, relating in any manner to the subject of wills. The section in the body of each of those acts, re-enacting section 23 of the act of 1854, but omitting the word "nor," and by such omission, repealing the limitation imposed by section 23 of the act of 1854, upon the amount of an estate which might be bequeathed by nuncupative will, is in conflict with the provisions of section 6 of the Organic Act of the Territory of Washington, which required that every law of the Territory—

"—shall embrace but one object, and that shall be expressed in the title."

By leaving the word "nor," after the words "two hundred dollars" and before the word "unless," out of Section 33 of the act entitled: "An Act defining the jurisdiction and practice in the probate courts of Washington Territory," not only was the limitation upon the amount of an estate which might be bequeathed by nuncupative will, which had been imposed by Section 23 of the Act of 1854,

removed, but when the estate did not exceed two hundred dollars the formalities required by 29 Stat. of Charles II and by the Act of 1854 were entirely dispensed with. Could a legislator, hearing only the title of the act read, possibly contemplate that such a vital change in the law of wills was being made, in an act entitled: "An Act defining the jurisdiction and practice in the probate courts of Washington Territory?" Would he not necessarily conclude upon hearing the title read that the bill was one to amend the Act of 1854, entitled: "An Act establishing probate courts for the Territory of Washington," instead of "An Act relating to wills?" The vice in the act is that the title not only does not give notice that the legislature is dealing with the subject of wills, but it is actually misleading because it purports to deal only with the jurisdiction and practice of probate courts.

There has been no legislation relating to nuncupative wills since the Territory of Washington became a state.

That the title

"An Act *defining the jurisdiction and practice* in the probate courts of Washington Territory" is not sufficiently broad to cover a provision in the body of such Act repealing by implication the limitation of two hundred dollars which had been imposed upon the estates bequeathed by nuncupative wills, there is no doubt. There is in the title no indication that the legislature of the Territory was legislating upon the subject of wills. Legislation in reference to that subject was therefore void, because the title of the act did not conform to the requirements of the Organic Law of the Territory.

Armour v. Western Construction Co., 36 Wash. not yet officially reported.)

State v. Tieman, 32 Wash. 294.

State v. McDonald, 25 Wash. 122.

Sengfelder v. Hill, 21 Wash. 371.

In the case last cited, the court said:

"The title of the act is 'An Act to protect innocent purchasers of *community* real property,' which under section 19 of Article II of the state constitution *is too narrow to include within the terms of the act property held by a title other than that specially mentioned.*"

Warburton v. White, 18 Wash. 511.

Howlett v. Cheatham, 17 Wash. 626.

National Bank of Commerce v. Seattle Pickle Works, 15 Wash. 126.

Percival v. Cowychee Dist., 15 Wash. 480.

In

State v. Bankers' & Merchants' Mutual Benefit Ass'n, 23 Kan. 501,

Mr. Justice Brewer, then upon the Supreme Bench of Kansas, said:

"The Constitution has said that the title must be an index to the law, and the courts may not sanction as a valid enactment any part of a statute to which the finger of the title does not point. If we should attempt to enlarge the title, we should defeat the very purpose of the constitutional prohibition, which was to make the title to a bill notice of all contemplated legislation."

Citizens' Saving Bank v. Auditor General, 82 N. W. 214, (Mich); 123 Mich. 511.

State v. Board, 41 Pac. 145; 22 Nev. 399.

Van Houten v. People, 43 Pac. 137; 22 Colo. 53.

State ex rel Cooper v. Springer, 46 Atl. 589; 65 N. J. L. 161.

In this case the court said:

"To comply with the Constitution, the title of a proposed law must give reasonable intimation of the matters under consideration; and as the title must limit the enactment to matters within its scope, it follows that the legislation on which rests the present application is void."

Gray, Atty. Gen. v. Newark Co., 46 Atl. 606; 65 N. J. L. 51.

Walling v. Mayor, 44 Atl. 864; 64 N. J. L. 203.

Harris v. State, 36 S. E. 232; 113 Ga. 725.

Hayes v. Storms, 45 Atl. 809; 64 N. J. L. 514.

In re Brean, 14 Colo. 401.

Rex Lumber Co. v. Reed, 77 N. W. 572; 107 Iowa, 111.

Frazier v. Georgia R. R. & Banking Co., 28 S. E. 662; 101 Ga. 77.

Folkner v. Dorland, 24 Atl. 403; 54 N. J. L. 409.

Brooks v. People, 24 Pac. 553; 14 Colo. 413.

Ragio v. State, 6 S. W. 401; 2 Pickle (Tenn.) 272.

Thomas v. Wabash Ry. 40 Fed. 126.

Case v. Loftus, 43 Fed. 839.

Crowther v. Fidelity Ins. Co., 85 Fed. 41.

In

People v. Congdon, 43 N. W. 986; 77 Mich. 351,

the body of the act provided for *articles of adoption*, and that the child adopted should be the *heir* of the persons adopting. The court said:

"The law is plainly in violation of the constitutional provision that the object of the act shall be expressed in its title. The title of this act as passed and adopted is, 'An Act to provide for the *changing the names of minor children and of other persons.*'"

In

State v. Hancock, 32 Atl. 689 ; 58 N. J. L. 139,

the syllabus, which is by the court, is as follows:

"The title of an act being 'An Act to tax *intestates' estates*, gifts, *legacies* and collateral inheritance, in certain cases,' held, that the title did not express a purpose to tax *real estate devised*, and the provisions for that purpose were therefore invalid."

The Code of 1881 was not a re-enactment of former laws, but was a compilation of such laws as had theretofore been legally enacted, and of such laws as were enacted at the special session of the legislature in 1881.

Baer v. Choir, 7 Wash. 631, 637.
Gracie v. McKenzie, 3 Wash. 194, 197.
Northern Pacific R. R. Co. v. Ellison, 3 Wash. 225.

In

Baer v. Choir, 7 Wash. 631, 637, the Supreme Court

of the State of Washington, said:

"It has perhaps been a misfortune to the people of the territory and state that the acts of the legislature of 1881 have not for the most important part been printed except in the volume known as the 'Code' of that year, and this is an evidence of it, for the Civil Practice Act, passed

December 1, 1881, which ends with section 763, did not contain either of the sections above mentioned. Section 1294 was contained in an act entitled 'An Act relative to crimes and punishments and proceedings for criminal cases,' passed November 16, 1881, and section 1683 was contained in an act entitled 'An Act defining the jurisdiction and practice in the Probate Courts of Washington Territory,' passed November 4, 1881 (Abbott's Real Property Statutes, No. 339n). Both acts were approved December 1, 1881, and went into effect immediately, and wherever in the code the words 'this code' are found, the acts read 'this act' only. In the face of these facts it cannot be held that the sections quoted had or were intended to have effect outside of the domain of the laws of which they were parts."

We have examined the original enrolled act, in the office of the Secretary of State of the State of Washington, which was passed at the session of 1881, and which contains section 1329 of the code of 1881, which is the same as section 4605 of Ballinger's Code. That act is entitled "An Act defining the jurisdiction and practice in the Probate Courts of Washington Territory." It was approved December 1, 1881. Is sections, instead of being numbered 1 to 1686 consecutively, begin with section 1297 and end with section 1686. Its title is also set forth in Pierce's Washington Code, published August, 1902, at page 355.

If the act of 1873, was invalid, so far as it related to nuncupative wills, because its title was in conflict with the provisions of the organic act, the act enacted in 1881 which contains section 1329 of the code of 1881 and section 4605 of Ballinger's Code, is invalid for the same reason.

The only law in regard to nuncupative wills which has ever been legally enacted in the Territory or State of

Washington is the act of 1854, entitled "An Act relating to wills." That act limited the amount of the estate which might be bequeathed by a nuncupative will to two hundred dollars. Since its enactment there has never been an act legally enacted which dispensed with that limitation. That law therefore stands. The argument that, because the compilers of the code of 1881 omitted the word "nor" from the code of 1881, the section of the act of 1854 containing the word "nor" ceased to be the law, is utterly fallacious. The compilers of the code could not make law by putting a provision in the code, if such provision was not in an act duly passed by the legislature of the territory, neither could the compilers of the code repeal a section of the law of 1854 by failing to include in the code of 1881 a section of the law of 1854 which had never been repealed by the legislature.

In support of their contention that the subject of wills can be dealt with in an act entitled "An Act defining the jurisdiction and practice in the Probate Courts of Washington Territory," counsel for defendant cite, as a case directly in point in their favor, Johnston v. Harrison, 47 Minn. 575, where the title of the act which was questioned was "An Act to establish a probate code." Counsel have not, however, called the attention of the Court to that part of the decision in Johnston v. Harrison which is absolutely against their contention. The Court in that case distinguished between a probate code and a probate code of *procedure*. It is clearly competent for a legislature to enact criminal laws relating to many different crimes, under the title of a Criminal Code or Penal Code. It might be equally competent for a legislature to deal

with matters relating to wills under the title of a Probate Code, but that is *not ground for the argument that* a matter relating to the amount of an estate which might be bequeathed by nuncupative will could be included under a title stating that the act related to defining the jurisdiction and regulating the practice in the Probate Courts.

In

Johnston v. Harrison, supra,

the court said:

"In our judgment, much of the argument of counsel for respondent rests upon an entirely too limited and narrow definition of the meaning of the words 'probate' and 'code.' They seem to construe the title of the act as if it read 'An Act to establish a Probate Court code of procedure.'"

When we turn to the act of 1873, page 329, section 366, we find it there provided as follows:

"And the foregoing shall be the code of practice and procedure in the Probate Courts of this territory."

It was not a probate code which was enacted, but it was a Probate Court code of procedure. The title of the act, therefore, was sufficient for the purpose of indicating that the act was upon the subject of the jurisdiction and the practice of the Probate Court, but it was not sufficient for the purpose of indicating that the legislature was repealing the limitation upon estates which could be disposed of by nuncupative will, which had been prescribed by the act of 1854, and dispensing with all formalities

in regard to the execution of such a will where the estate bequeathed was *under two hundred dollars.*

The alleged nuncupative will under which Marie Carrau claims the entire estate, asserts that the estate bequeathed is worth "many thousands of dollars." It is, therefore, void upon its face.

In

Pierce v. Pierce, 46 Ind. 86.

the complaint was against the widow of one Pierce, and Jones, the administrator of his estate. The appellee was the mother of the deceased. The plaintiff claimed that she was entitled to one-half of the estate, and brought the action to settle the rights of the parties in the estate. The defendants set up a claim to the whole of the estate. This claim was based on an alleged nuncupative will, which it was averred had been made by the deceased, when a soldier of the United States in the Civil War, just as he was upon the point of leaving home in such service, and while in the possession of the property set forth in the complaint.

The court said:

"It may be considered, first, whether the alleged nuncupative will is valid or not, and, second, if it is not valid, what are the legal rights of the parties in the estate. * * * The sections of the statute bearing on the question are section 20, page 555, and section 21, page 556; 2 G. & H. They read as follows: 'Section 20: No nuncupative will shall be valid when more than the value of one hundred dollars is bequeathed nor unless it be made in

the last sickness of the testator * * *

THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON HAD JURISDICTION OF THE SUIT BETWEEN THE PARTIES TO CONSTRUE THE ALLEGED NUNCUPATIVE WILL AND DETERMINE THAT IT DID NOT CONVEY REAL ESTATE, AND THAT THEREFORE, EVEN IF IT WERE VALID, THE DECEDENT DIED INTESTATE AS TO HIS REAL ESTATE.

Washington adopted the common law.

"The common law, so far as it is not inconsistent with the constitution and laws of the United States or of the State of Washington, nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state."

Pierce's Code, Sec. 249.
Ball. Code, Sec. 4783.

Substantially this same provision existed in territorial days, except that the word "Territory" was used in place of "State". Laws 1856, page 7. The territorial legislature, instead of creating the right to make a nuncupative will, recognized the right to make a nuncupative will as existing at common law, but saw fit to limit the amount of the estate which might be bequeathed, and to impose restrictions upon the execution and the proof of such wills. The language of the statutes is not that a person shall have the right to dispose of his estate by nuncupative will. The language is:

"No nuncupative will shall be good when the estate *bequeathed* exceeds," etc.

At common law, land could not be devised. The disability of the common law was partially removed by statute 32, Henry VIII. Prior to the statute of 32, Henry VIII, personal property could be disposed of by a nuncupative will. Real estate could not be disposed of by any kind of will. The statute 32, of Henry VIII, while allowing real estate to be devised, required the will to be in writing. Nuncupative wills remained unaffected by the statute. The Statute 29, of Charles II C. 3, imposed stringent restrictions upon nuncupative wills. The Statute of Washington imposed additional restrictions upon nuncupative wills, and provided that they should not be good where the estate bequeathed exceeded two hundred dollars in value. That the legislature of the Territory, when imposing upon the right to make nuncupative wills greater restrictions than were imposed by the Statute of Charles II, intended to change the common law so that such wills could dispose of real estate, is a proposition to sustain which no possible reason can be assigned. The matter, however, is placed beyond all possible doubt, because the legislature, by Section 24 of the act, in dealing with seamen at sea and soldiers in military service as a favored class, and while exempting them from the provisions of Section 23, expressly provided:

"Any mariner at sea or soldier in the military service may dispose of his wages or other personal property, as he might have done by the common law or by reducing the same to writing."

The contention of counsel for defendant that the legislature, by an act imposing greater restrictions upon the right to make nuncupative wills than were imposed by the

Statute of Charles II, and while exempting mariners at sea and soldiers in the military service from its operation so far as wages and personal property were concerned, conferred upon the unfavored class the power to devise real estate, by declaring "No nuncupative will shall be good when the estate *bequeathed* shall exceed," etc., is manifestedly unsound. Not only, however, did the legislature in the section of the act relating to nuncupative wills use the word "bequeathed," but in the sections of the act not relating to nuncupative wills, whenever dealing with the subject of lands passing by will, used the word "devise." Unless the object of language is to conceal instead of express thought, the legislature, in dealing with bequests under nuncupative wills, referred to personal property, for, when it dealt with wills relating to lands, it advisedly used the word "devise." From the language of the statute alone the matter is not doubtful, but in the light of the authorities there is no room for controversy.

That a nuncupative will cannot convey real estate is conclusively settled by an unbroken line of authorities.

In the case of

In re Davis' Will, 79 N. W. 761 (103 Wis. 455),

the Supreme Court of Wisconsin had before it for construction a nuncupative will in the following language:

"I give unto my wife the income of my entire estate during her widowhood. If she shall remarry, she is to have one-third of my estate, and the other two-thirds is to go to my children. Upon the death of my wife, my whole estate is then to go to my children. I appoint my brother Oscar F. Davis my executor."

The Court said:

"The only question for consideration is whether the words so spoken, and constituting the nuncupative will of the deceased, were effectual to pass the income of the real estate to the widow. * * * All wills, except nuncupative wills, must be in writing, and executed as prescribed. * * * And the statute further declares that 'no nuncupative will shall be good when the estate bequeathed shall exceed the value of $150.00 that is not proved,' as therein prescribed. * * * The word 'bequeathed' is commonly used with reference to the disposition of personal property; and the word 'devise' with reference to the disposition of real property. * * * We must hold that under our statutes a nuncupative will is inoperative to transfer title to real estate. This is in accordance with the rulings of other courts under similar statutes."

To the same effect are the following authorities:

Sadler v. Sadler, 60 Miss. 251.
McLeod v. Dell, 9 Fla. 451.
Smithdeal v. Smith, 64 N. C. 52.
Palmer v. Palmer, 2 Dana. 390.
Page v. Page, 2 Rob. (Va.) 424.
Lewis v. Aylott, 45 Tex. 190.
Pierce v. Pierce, 46 Ind. 86.
Schouler on the Law of Wills, Sec. 362.
Moffett v. Moffett, 67 Tex. 642.

VI.

THE CIRCUIT COURT OF THE UNITED STATES HAD JURISDICTION OF THE SUIT BY REASON OF COMPLAINANTS BEING ALIENS AND DEFENDANTS BEING CITIZENS OF THE UNITED STATES RESIDING IN THE STATE OF WASHINGTON, AND THE VALUE OF THE MATTER IN DISPUTE EXCEEDING THREE HUNDRED THOUSAND DOLLARS.

"Jurisdiction is the right to put the wheels of justice in motion, and to proceed to the final determination of a cause upon the pleadings and evidence. It exists in the Circuit Court of the United States under the express terms of the Act of August 13, 1888, if the plaintiff be a citizen of one state, the defendant a citizen of another, if the amount in controversy exceed two thousand dollars, and the defendant be properly served with process within the district. Excepting certain quasi-jurisdictional facts necessary to be averred in particular cases, and immaterial here, these are the only facts required to vest jurisdiction of the controversy in the Circuit Courts."

Ill. Cent. R. R. Co. v. Adams, 180 U. S. 28

In

Madison Traction Co. v. St. Bernard Mining Co., 196 U. S. 239,

this court had before it the question whether a condemnation proceeding instituted in the County Court of Hopkins County, Kentucky, under a statute which required commissioners to make an award of damages in writing, and required the Clerk of that court to issue process

against the owners to show cause why the report should not be confirmed, was a suit removable to the Circuit Court of the United States, and if so, whether, after a removal, the Circuit Court of the United States had jurisdiction in a suit in equity to enjoin the party seeking to condemn from prosecuting further proceedings in the County Court of the state.

At page 246, of the opinion, Mr. Justice Harlan said:

"Why could not the proceeding instituted in the County Court have been brought originally in the Federal Court? The case, as made in the County Court, was, beyond question, a judicial proceeding; it related to property rights; the parties are corporate citizens of different States; and the value of the matter in dispute exceeded the amount requisite to give jurisdiction to the Circuit Court. It was therefore a proceeding embraced by the very words of the Constitution of the United States which declares that the 'judicial power shall extend * * * to controversies * * * between citizens of different States,' as well as by the act of 1887 (§1), which declares 'that the Circuit Courts of the United States shall have *original* cognizance, concurrent with the courts of the several States, of *all* suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, * * * in which there shall be a controversy between citizens of different States.' In view of these explicit provisions it is clear that the proceeding in the County Court was a suit or controversy within the meaning both of the Constitution and of the judiciary act. We could not hold otherwise without overruling former decisions of this court."

At page 247 of the opinion, the court quoted with approval from Boom Co. v. Patterson, 98 U. S. 403, as follows:

"'If the (that) inquiry take the form of a proceeding *before the courts* between parties—the owners of the land on the one side and the company seeking the appropriation on the other,—there is *a controversy which is subject to the ordinary incidents of a civil suit.*'"

And at page 248, the court, still quoting from the same opinion, said:

"'In Gaines v. Fuentes, 92 U. S. 20, it was held that a controversy between citizens is involved in a suit whenever any property or claim of the parties, capable of pecuniary estimation, is the subject of litigation and is presented by the pleadings for judicial determination. Within the meaning of these decisions, we think the case at bar was properly transferred to the Circuit Court, and that it had jurisdiction to determine the controversy.'"

THE CIRCUIT COURT HAD JURISDICTION OF THE CONTROVERSY BETWEEN THE PARTIES, AND ALL NECESSARY PARTIES WERE BEFORE THE COURT.

It is contended by counsel for Marie Carrau that the Circuit Court of the United States had no jurisdiction as a Federal Court, because it appeared that one Eugene Timothy Sullivan claimed to be the sole heir of the deceased John Sullivan; that Eugene Timothy Sullivan was a citizen of the State of Washington and Marie Carrau was a citizen of Washington; that Eugene Timothy Sullivan was an indispensable party to this suit, and that if made a party he would be a party plaintiff, and therefore the suit would have a citizen of the State of Washington as party plaintiff, and a citizen of the State of Washington as party defendant, and such joinder would oust the Circuit Court of jurisdiction.

The contention, in view of the pleadings and the record in this suit, is certainly novel.

The bill in this suit was filed on the 20th of June, 1901. The parties to the bill were complainants, who were subjects of the King of Great Britain and Ireland. The defendants were two citizens of the United States and of the State of Washington. The jurisdiction of the Circuit Court of the United States attached on that date. Eugene Timothy Sullivan filed no claim until the 23rd day of August, 1901. (See Carrau's Plea in Abatement, record, pp. 19-21.)

The proposition is elementary that if the jurisdiction of the Circuit Court has attached it will not be divested by reason of a transfer of interest to a person who could not have originally instituted the suit in the Circuit Court. It is also elementary that a person not possessing the requisite citizenship cannot oust the Circuit Court of its jurisdiction, which previously attached, by intervening in the suit.

Hardenberg v. Ray, 151 U. S. 112.

Therefore, so far as Eugene Timothy Sullivan is concerned, if the Circuit Court of the United States acquired jurisdiction of this suit on the 20th day of June, 1901, it could not be divested of that jurisdiction by Eugene Timothy Sullivan filing a claim as heir of the deceased in the Superior Court of the State of Washington. It might just as well be claimed that if Marie Carrau had been in possession of the real estate, and the complainants had instituted an action of ejectment against her in the

Circuit Court of the United States, Eugene Timothy Sullivan could have ousted the Circuit Court of jurisdiction by instituting an action of ejectment against her in the state court. If, however, it should be claimed that there were other persons, aliens, who also claimed to be heirs of the deceased, and that those persons could not be joined as defendants without ousting the Circuit Court of jurisdiction, it is sufficient answer that those persons were not within the jurisdiction of the Circuit Court and that they were not indispensable parties, and furthermore, that the complainants and defendant both claim that such persons have no interest in the estate.

By reference to the pleadings it will be found that the defendant Marie Carrau admitted that there were no persons nearer of kin to the deceased than first cousins. Complainants by establishing that they were first cousins of the deceased, became entitled to recover their shares in the estate. The admision of the defendant Marie Carrau appears at page 36 of the record. An examination of the answer of Marie Carrau will, however, fail to disclose that she pleaded a non-joinder of either necessary or proper parties. She did not allege that the deceased left any heirs. She merely pleaded that certain persons had *filed* claims in the state court. If a suit in ejectment had been instituted against her, it certainly could not be contended that she could defeat the jurisdiction of the Circuit Court of the United States by showing that persons, whose citizenship would have deprived the Circuit Court of the United States of jurisdiction if made parties, had instituted ejectment suits against her in the state court. Not only, however, did she not plead that there was a non-joinder

of indispensable parties, but she endeavored to prove that complainants were not relatives of the deceased, because she claimed that the deceased left no relatives. Her claim, therefore, is that because certain parties had filed claims in the state court alleging that they were the only heirs of the deceased, and that both the complainants and herself contended that the persons filing such claims had no interest in the estate, the fact of the filing of the claims divested the Circuit Court of jurisdiction to determine the controversy before it where the parties on one side were aliens, and on the other citizens of the United States.

It is certainly a novel proposition that a person who all parties to a suit say has no interest in the property is such an indispensable party to a suit to determine the title to that property that no decree can be rendered in the suit without his joinder, and yet if joined his joinder will divest the court of jurisdiction over a controversy between parties claiming the property, between whom the requisite diversity of citizenship does exist.

If it was the intention of Marie Carrau to divest the Circuit Court of the United States of the jurisdiction which had attached, by showing that parties, whose citizenship, if such parties were joined, would oust the Circuit Court of jurisdiction, were indispensable parties, it was incumbent upon her not only to plead that fact but to prove it.

To her answer the complainants filed a general replication. Evidence was taken in the suit. Complainants offered evidence which proved that they were the only first

cousins, heirs at law and next of kin of the deceased. The defendant Carrau admitted by her answer that there were no persons nearer of kin to the deceased than first cousins. She introduced evidence for the purpose of establishing that the complainants were not related to the deceased because he died without relatives. We submit, therefore, that there is no foundation for the claim that there were any persons who should have been joined as parties other than those who were before the court.

The authorities sustain the proposition that all of the necessary parties to the suit were before the court.

In

Williams v. United States, 138 U. S. 514,

certain lands in controversy had been certified to the State of Nevada. The state made a contract with appellant for the sale to him, he paying one-fifth of the purchase money at the date of the contract, and contracting to pay the balance in subsequent installments. The United States filed a bill in the Circuit Court for the District of Nevada against appellant alone. The scope of the allegation of the bill was that the lands were improperly certified to the state. The prayer of the bill was for the cancellation of the contract between appellant and the State of Nevada, and an adjudication that appellant had no interest or title in the lands, and that he be directed to surrender to the state for cancellation all contracts and agreements which he had with the state. The court said:

"The first contention of appellant is that this action could not be maintained, because the State of Nevada was

not made a party, it holding the legal title. * * * With respect to the first contention, it cannot be doubted that the certification operated to transfer the legal title to the state (Frasher v. O'Connor, 115 U. S. 102), nor that the contract between the state and appellant passed to him the equitable title, the legal title being retained by the state simply as security for the unpaid part of the purchase money. *The proposition, therefore, is that where there are outstanding two interests or titles held by different parties, the real owner cannot proceed against either without joining the other; that only one action can be maintained to divest these parties of their separate titles, and that to that action both adverse holders must be parties. The proposition is not sound. A court of equity has jurisdiction to divest either one of the adverse holders of his title in a separate action.* Doubtless the court has power, when a separate action is instituted against one, to require that the other party be brought into the suit, if it appears necessary to prevent wrong and injury to either party, and to thus fully determine the title in one action, but such right does not oust the court of jurisdiction of the separate action against either. It has jurisdiction of separate actions against each of the adverse holders, and there is no legal compulsion, as a matter of jurisdictional necessity, to the joinder of both parties as defendants in one action. There are special reasons why this rule should be recognized in this case. It may be that the Circuit Court would not have jurisdiction of an action against the state; that an action against a state on behalf of the United States can be maintainable only in this court, and that, when brought in this court, no other party than the state can be made defendant. We do not decide that the things are so, but suggest the difficulty which must have presented itself to the counsel for the government, and which justifies a separate suit against the holder of the equitable title."

In

Kerr v. Watts, 6 Wheat. 550,

this court said:

"No one need be made a party complainant in whom there exists no interest, and no one party defendant from whom nothing is demanded. Watts rests his case upon the averment that all the interests once vested in O'Neill and the Scotts now center in himself, and provided he can recover the land now in possession of those actually made defendants, he is contented afterwards to meet the just claims of any others who are not made defendants. No rights will be affected by his recovery but those of the actual defendants and those claiming through him."

In the case at bar, these complainants are entitled to relief against the defendants actually before the court, and are content afterwards to meet the claims of any others who are not made defendants. These complainants say there are no others who should be made defendants. The defendant Carrau says that there are no relatives of the deceased. If the claim of these complainants is true, there is no need to make the absent claimants parties. If the claim of the defendant Carrau is true, there is no need to make them parties. If persons other than those before the court had any rights in the estate, the decree in this suit would not affect them.

Elmendorf v. Taylor, 10 Wheat. 152.
Vattier v. Hinde, 7 Pet. 252, 263.
Storey v. Livingstone, 13 Pet. 359, 375.
Joy v. Wirts, Fed. Case 7554.
House v. Mullen, 22 Wall. 42.
Ry. Co. v. Stewart, 95 U. S. 284.
Dick v. Balch, 8 Pet. 36.
Williams v. Gibbs, 17 How. 239.
U. S. v. Hendy, 54 Fed. 447.
Billings v. Aspen Min. Co., 51 Fed. 338.
Harrison v. Urau, Fed. Case 6146.

Union M. Co. v. Dougherty, 81 Fed. 73.
Smith v. Lee, 77 Fed. 779.
Hamilton v. Savannah R. R., 49 Fed. 412.
Society v. Hartland, Fed Case 13155.

VII.

UPON THE LAW AND FACTS OF THE CASE, THE DECREE OF THE CIRCUIT COURT FOR THE DISTRICT OF WASHINGTON, IF IT SHOULD BE REVIEWED, SHOULD BE AFFIRMED.

The Circuit Court of the United States found complainants to be the first cousins, heirs at law and next of kin of the deceased, John Sullivan, and as such, entitled to all of his real and personal property. It found that John Sullivan died intestate; that he never attempted to make a will, nor did he speak the words nor any words of similar import, which Mary Craven claimed that he spoke and intended as a will. The Circuit Court found that the attempted probate of the will was a mockery; that the decree of probate had been rendered without jurisdiction; that the court entering the decree had never acquired jurisdiction to hear any proof in support of the pretended will; that the citation which the court issued, calling on the heirs and next of kin to appear and contest the probate of the alleged nuncupative will was made returnable on the day it was issued, and at an hour which had already passed; that the time for probating the alleged nuncupative will had expired, and that it never could, even if any

cuted, be probated. The decree, therefore, enjoined the defendant Marie Carrau and all persons claiming under her and representing her, from setting up any claim to the estate of John Sullivan, deceased, under the alleged nuncupative will and the void and fraudulent decree of probate, and it directed the administrator of the estate to recognize the complainants as the heirs at law and next of kin of the deceased, and as such entitled to their shares in the estate.

The findings of fact of the Circuit Court, that complainants were first cousins, the heirs at law and next of kin of the deceased, and that the alleged will was never made or attempted to be made by the deceased, under the rulings of this court and of the Circuit Courts of Appeals, must be presumed to have been correct, and will not be disturbed unless an obvious error has been made in the application of the law to the facts, or some serious and important error has been made in the consideration of the evidence.

Tilghman v. Proctor, 125 U. S. 136.
Kimberly v. Arms, 129 U. S. 512.
Tate et al v. Holmes et al, 76 Fed. 664, 667.
Bank v. Rogers, 53 Fed. 776.
Warren v. Burt, 58 Fed. 101.
Savings & Loan Society v. Davidson, 97 Fed. 696.

In the case at bar, however, not only are the findings by the Circuit Court sustained by the evidence, but upon the evidence two reasonable minds could not have differed. The rule announced in the cases above cited applies where the evidence is conflicting. In the case at bar the evidence demonstrates the correctness of conclusion reached by the Circuit Court.

COMPLAINANTS ARE FIRST COUSINS, HEIRS AT LAW AND NEXT OF KIN OF THE DECEASED JOHN SULLIVAN.

We now invite the attention of the court to a review of the evidence establishing the fact that the complainants are first cousins, heirs at law and next of kin of the deceased John Sullivan, and as such entitled to his estate.

We will trace the history of John Sullivan of Seattle backwards, instead of beginning with his ancestors and tracing down.

John Sullivan, of Seattle, wrote to Mr. Gregg, a solicitor in Cork, requesting advice as to what was necessary in order to take out administration on his sister's estate. On November 18, 1895, he wrote as follows:

Exhibit "W" (795).

Sullivan Building, Seattle, Wash. U. S. A.

November 19, 1895.

Mr. Robert Gregg.

Dear Sir: I wish to correspond with you in regard to an estate left by my sister Eliza Sullivan, deceased. The estate consists of one hundred and fifty pounds, 10-4, Cork Savings Bank. Mr. H. Carr Cave kindly gave me your address. You will please let me know what the cost will be for administration in the above estate, as near as you can give it, such as solicitor, administrator and court fees, and whether I can name who the administrator is to be. All information in regard to the above matter will be thankfully received.

Most respectfully,

JOHN SULLIVAN.

I have enclosed some old stamps for Mr. H. Carr Cave's boy, which you will please send to him.

J. S.

To this letter Mr. Gregg replied as follows:

Complainants' Exhibit "X." (796)

Robert Gregg, Solicitor, Commissioner for Administering Oaths.

Offices 67 South Mall, Cork.

Decr. 7th, 1895.

Mr. John Sullivan, Sullivan Building, Seattle, Washington, U. S. A.

Eliza Sullivan dec'd.

Dear Sir: I recd yours of 19 ulto and have seen Mr. Cave and given him the stamps for his son, for which he desired me thank you.

It is rather difficult to say exactly the amount of costs of obtaining admon to decd. So much depends on circumstances. If you were here, and took out the administration in person, and that you are the only next kin, the outside cost would be about £10. If, as I say, there was no other next of kin, father, mother, brother or sister, or child of dec'd brother or sister, and that you wished to appoint any person here to obtain the administration for you, which you could do by executing a power of atty to that person, of course this would add to the expense say probably £3, but it must be sworn to, if it be the fact, that you are the only brother and only next of kin of said deceased, which I presume to be the fact. I think I have given you all the information in my power, and await your further instructions. I may also tell you that if you were to come to Cork for the purpose of taking out the administration and that you have any friends who would kindly enter into the necessary administration bond, the entire matter would be completed

within at the outside a fortnight exclusive of holydays, which commence at Christmas and continue for about ten days after.

I remain truly yours,

ROBT. GREGG.

Both of these letters were offered in evidence by complainants' counsel, for the purpose of establishing the identity of John Sullivan of Seattle, the owner of the Sullivan Block, with the John Sullivan of Seattle who administered upon the estates of Eliza or Bessie Sullivan and Ellen Silva, and were objected to by counsel for the administrator on the ground that they were incompetent, irrelevant and immaterial.

The letters of John Sullivan to Mr. and Mrs. Lyons and to Eugene F. Collins, solicitor, show clearly that John Sullivan of the Sullivan Building, Seattle, Washington, was a brother of the Bessie Sullivan who was placed in an asylum for the insane in Cork. On April 29, 1879, John Sullivan wrote to Mr. Lyons as follows:

Exhibit "Y" (519).

"Seattle, Wash. Ter., April 29, 1879.

Thomas S. Lyons, Esq.

Dear Sir: Your valued favor of March 30 came duly to hand. I am very much pleased with the course you have pursued and the interest you have taken in my sister's welfare and also the kind attention extended by your sister-in-law. I am very grateful to each of you for your kind attention to my sister in her affliction. I am really sorry to know that there is no prospect of her recovery. You have done perfectly right in having my sister placed

in a asylum where she will be taken good care of, and having sufficient money on hand to pay for her maintainence I think it is right to have it expended in making her as comfortable as possible under the circumstances.

Hoping that you will continue your kind attention to my sister, I am

Most gratefully yours,

JOHN SULLIVAN.

On October 7, 1882, Sullivan wrote to Mr. Lyons:

Exhibit "Y2" (520).

Seattle, Wash. Ter., October 7, 1882.

Mr. Thomas S. Lyons:

My Dear Sir: Your very kind letter of August 31, with statement of my sister's bank account came duly to hand. I really must say it is quite satisfactory. You will please continue the same arrangements in regard to the care of my sister, and draw from her own fund for her maintainence. I see that she has sufficient to her credit to keep her some time. Believe me that I will bear in mind and see to it that her account in the bank is not entirely drawn. Please mention to Mrs. Lyons I am very grateful to her for her kindness in furnishing my sister with clothing, boots, etc., also the number of new papers that she so kindly sent me. They are the first from my native city that I have had the pleasure of reading for a number of years. I have sent you by Wells, Fargo & Company's Express a few table mats for Mrs. Lyons. When received you will please be so kind as to hand them to her. They are made by Indian women living on the sea-coast of this Territory.

Believe me, kind sir, your very humble servant,

JOHN SULLIVAN.

Exhibit "Y4" (521) acknowledged the receipt of a letter from Mrs. Lyons, dated March the 5th; also a bunch of shamrock.

Exhibit "Y6" (522), July 15, 1887, thanks Mrs. Lyons for her kind attention to his sister in her great affliction.

Exhibit "Y8" (523), dated August 20th, 1892, is to Mrs. Lyons, and acknowledges the receipt of photographs from Cork and Belfast. It then proceeds:

"I was grieved to hear of the loss that you have sustained in the death of Mr. Lyons, and later, of your dear son. I offer you my most sincere and heartfelt sympathy, and may God comfort and help you in your heavy loss. I regret that I did not receive those letters that were returned to you. I was absent from the city at that time, travelling. I left August 18, 1888, and returned May, 1889. June 6th, 1889, a fire wiped out the business portion of the town. My buildings were wiped out with the rest. For a year after I was very busy rebuilding. In the meantime we had the streets widened and straightened. Now we have got a respectable looking town, good buildings and wide streets."

The letter proceeds to describe the town, and then concludes:

"*My address is Sullivan Building, Seattle Wash.*, U. S. A. Thanking you for your kind remembrance, I am

Yours very truly,

JOHN SULLIVAN."

Exhibit "Y19" (529).

Seattle, Wash., U. S. A., December 16, 1896.

Mr. E. F. Collins,

Dear Sir: Your valued favor of the 30th November just to hand. I have enclosed herewith the power of attorney, duly signed and acknowledged. *I wish to state that my deceased sister Ellen, who was married, had no children. I am the only heir.* I received a letter from Mrs. E. Lyons a few days ago, stating that she had met you in Dublin, and that you kindly consented to take up the matter of my deceased sister's estate. Mrs. E. is very kind. She has taken quite an interest in this matter for me. I am pleased to know that you have succeeded in getting the consent of such a responsible gentleman as Mr. Roache to act as administrator in this estate. I am

Very respectfully yours,

JOHN SULLIVAN.

Address Sullivan Building, Seattle, Wash., U. S. A.

(For the letter of November 30th, 1896, see page 110).

In Exhibit "Y20" (529), he refers to administration on Bessie's estate.

Exhibit "Y21" (530).

Seattle, Wash., U. S. A. July 8th, 1897.

M. Eugene F. Collins,

Dear Sir: You will please inform me what progress have been made in the settlement of the estate of Eliza Sullivan, deceased, and how soon will you be able to close the matter up, and oblige

Very truly yours,

JOHN SULLIVAN.

Address Sullivan Building, Seattle, U. S. A.

(Answered by Mr. Collins, August 16th, 1897. (110).

Exhibit "Y22" (530).

Seattle, Wash., U. S. A., March 1, 1899.

Mr. Eugene F. Collins.

Dear Sir: Your valued favor of February 1st came duly to hand, with power of attorney enclosed. I wish to say that I will defer taking any action in that matter for the present, as I am going to the Paris Exposition. I will make a visit to Ireland, and while there I will look up that matter. I thank you and Mrs. Lyons for the interest you have taken in my behalf.

Most respectfully yours,

JOHN SULLIVAN.

(For Mr. Collins' letter of February 1st, 1899, see page 109, and for his answer (109)).

Exhibit "Y23" (530).

Pembroke Street, Cork, May 19, 1900.

E. F. Collins.

Dear Sir: I arrived to-day at the Imperial Hotel. I would be pleased to see you in regard to my deceased sister's estate.

Yours truly,

JOHN SULLIVAN.

Answered by Mr. Collins (108).

Exhibit "Y10" (524).

Pembroke Street, Cork, May 19, 1900.

Dear Mrs. Lyons: You will be surprised at knowing that I am in my old home town, Cork, after an absence

of forty-one years. I arrived this morning. First thing I did after registering my name at the hotel was to walk along the Grand Parade and Patrick Street. The streets do not look quite familiar to me as yet, but will after short acquaintance. I have written to Mr. Eugene F. Collins today, and will have him look after the money in the bank which belonged to my deceased sisters Ellen and Bessie. I am on my way to the Paris Exposition, and hope to have the pleasure of seeing you before long.

Yours very truly,

JOHN SULLIVAN.

Exhibit "Y12" (525).

Pembroke Street, Cork, May 30, 1900.

Dear Mrs. Lyons: Your very kind letter of the 21st inst. was received. I was very much pleased to know that I was not a stranger in Ireland. I am certainly one in Cork. I have not found any person in Cork that I know. I called on Mr. Breton, Patrick Street, Jewellers. I found the grandson managing the business. All the rest were dead. I worked for the grandfather. I have been out to the lakes of Killarney. I will tell you what I think of the lakes when I see you next Saturday.

Yours very truly,

JOHN SULLIVAN.

Exhibit "Y14" (526), is a letter to Mrs. Lyons, dated June 9th, 1900. In it he mentions that he told the lawyers to send the money to his bankers in Seattle when the month was up, as he did not wish to return to Cork again.

Exhibit "Y16" (527).

Seattle, Wash., U. S. A., September 12, 1900.

Dear Mrs. Lyons: You will see that I am at my old home. I arrived here a short time ago after a very en-

joyable trip. Business is very good here. My building is full of tenants, and of course I am getting a good rental from the building. Other properties which I have are increasing in value. Do not be surprised when I say that I am going to leave for Paris the last of this month. I will spend the winter there. When the weather gets cold in Paris, I will go down to Monte Carlo. I have just received the money from Wynne & Wynne, lawyers, of Cork, 153 pounds 12-10. I brought the inclosures with me from Paris. Am learning French. Do not be surprised if I should write my next letter to you in French.

Hoping that you are enjoying the best of health; give my kindest regards to your children; their names have slipped my mind at this writing. I am

Very truly yours,

JOHN SULLIVAN.

The affidavit of John Sullivan as administrator of the estate of Eliza Sullivan describes her as "late of Bull's Asylum," and states that he was the brother of Bessie Sullivan. Exhibit "M" (788).

The affidavit of John Sullivan as administrator of the estate of Ellen Silva, late of Evergreen Street, states that he is her only brother and next of kin. Exhibit "N," (789).

Administration in Cork was granted to John Sullivan, formerly of Seattle, on the estate of Eliza Sullivan, late of Bull's Asylum. Exhibit "O" (790).

Administration was granted in Cork on the estate of Ellen Silva, late of Evergreen Street, to John Sullivan, formerly of Seattle, Wash., U. S. A. Exhibit "P" (791).

In the bond executed by Sullivan and Collins in the matter of the estate of Ellen Silva, Ellen Silva is de-

scribed as "late of Cronin's (Crone's) Lane." A pen is then run through the name Cronin's Lane, and the words "Evergreen street" interlined. Exhibit "Q" (792).

A tombstone was erected at the grave of Ellen Silva in the Botanic Gardens in Cork. Exhibit "K," (787). The inscription is as follows:

"Sacred to the memory of Ellen Silvie, Died November 27, 1871, aged thirty-five years. R. I. P."

The graves of the father and mother of John Sullivan could not be found, but the grave of Ellen Silvie was opened, and in it were found two coffin plates.

Exhibit "L," (787), shows that on one coffin plate appears the following inscription: "Abigail Sullivan, Died July 26, 1872, aged 66 years. Peter O'Sullivan, Died Aug. 19, 1873."

The testimony of *Michael O'Regan*, (742), is as follows:

"Q. Do you know where the grave of Ellen de Silva is?

A. Yes, I do, so far as the tombstone is concerned.

Q. Have you with you a copy of the inscription on that tombstone?

A. I have.

Q. Please produce it. Did you make this yourself?

A. I did.

Q. I show you a paper marked Complainants' Exhibit 'K,' and ask you if you have copied that from the tombstone of Ellen Silva in the Botanic Gardens?

A. I have done so. The stone is low and I came down on my face and hands.

Q. Is that a copy?

A. It is a true copy.

(Complainants now offer in evidence Complainants' Exhibit 'K.' Mr. Riddle objects to the paper, on the ground that it is incompetent, irrelevant and immaterial).

* * * * *

Q. Did you ever see any coffin plates in that grave?

(Mr. Riddle raises an objection on the grounds last stated).

A. Yes.

Q. How did you come to see those coffin plates?

A. I got commands from Mr. McCarthy that he had a letter from Mr. Julian to see all such matters; accordingly I brought them in with me, and I stayed there until they dug up the breastplate.

Q. Then you did see the grave opened?

A. I saw the grave opened opposite the stone Silva.

Q. Did you find in that grave the coffin plate of Peter Sullivan?

(Mr. Riddle objects on the same ground as before, and on the additional ground of a leading question).

Q. What of that coffin plate did you find there?

A. I found Peter Sullivan and Abigail.

* * * * *

Q. I ask you if the following is a true and correct copy of what appeared on the breastplate to which you have referred? 'Abigail Sullivan, died July 26th, 1872, aged 66 years. Peter Sullivan died August 19th, 1873.' Is that a true and correct copy of what appeared on these breastplates?

A. Yes.

Cross-examined by Mr. DONEGAN (744).

Q. How many times was this grave opened up?

A. Twice.

Q. At whose instance in each case?

A. Mr. McCarthy gave me orders the first time to open it, and secondly I opened it before the solicitors.

Q. I understand you to say that you got instructions from Mr. McCarthy to open the grave first of all. Now, who is Mr. McCarthy?

A. He is the curator of the cemetery."

Ellen Silva was before marriage Ellen Sullivan. On June 3, 1854, Ellen Sullivan was married to Emanuel S. de Silva. The witnesses to this marriage were Peter Sullivan and John Sullivan. Exhibit "E" (783).

Denis Riordan, a resident of Cork, 76 years of age, who had lived at No. 2 Crone's Lane since he was a year and a half old, testified that he knew Peter Sullivan, his wife, his two daughters, Bessie and Ellen, his son John, and Hannah Callaghan, who lived with them. He testified (650):

"Q. Do you remember Ellen Sullivan? A. Yes.
Q. She was married? A. Yes.
Q. To whom?
A. To a foreigner named Emmanuel de Silva.
Q. What became of him?
A. He went to sea and died in the West Indies.
Q. Did Ellen leave any children? A. No."

Margaret McGrath, a second cousin of John Sullivan, a resident of the vicinity of Cork, born on the Hanlon road, testified that she heard of the marriage of Ellen, but did not know John (635).

Hannah Callaghan, complainant, testified (653) that she knew John's two sisters, Bessie and Ellen.

"Q. Was either of them married (664)?
A. Yes, Ellen married.
Q. To whom?

A. [illegible]
Q. What was his occupation or calling?
A. [illegible]
Q. Do you recollect Ellen's death?
A. Yes, I do; well.
Q. Had she any family?
A. No, sir; never had any.
Q. Do you recollect what became of Bessie?
A. She died insane, in Bluff's Asylum."

Daniel Burke, a schoolmate of John Sullivan at the South Monastery, testified as follows [illegible]:

"Q. And now, what are the names of the sisters?
A. Bessie and Ellen, sir.
Q. Do you recollect whether either of them were married?
A. Ellen was married.
Q. Do you remember what her husband's name was?
A. A foreign sailor."

Bessie Murphy, an employee at Bramhall & Crawford's Brewery, for fifty-three years, testified [illegible]:

"Q. What became of Bessie Sullivan?
A. Bessie Sullivan died in an asylum.
Q. Had Ellen Sylvia ever married?
A. She married a Portuguese captain.
Q. What became of him?
A. He died."

Ellen Buckley testified to the marriage [illegible].

Ellen Sheridan [illegible].

Anne Kirby [illegible].

Bridget Crowe [illegible].

Catherine Murphy [illegible].

Anne McDermott [illegible].

Margaret Cronin (739).

Mary O'Leary (746).

Ellen Sullivan was the daughter of Peter Sullivan and Abby Sullivan, formerly Abby McAuliffe. Baptismal certificate of Ellen Sullivan, Exhibit "C" (780). Ellen was baptized on the 3rd of January, 1836, at the Church of St. Finbarr. The sponsors of Ellen Sullivan were William Murphy and *Mary Sullivan*.

Bessie Sullivan was the daughter of Peter Sullivan and Abby Sullivan, formerly Abigail McAuliffe. Baptismal certificate of Bessie Sullivan, Exhibit "B" (778). Bessie was baptized on the 17th of January, 1834, at St. Finbarr's.

John Sullivan was the son of Peter Sullivan and Abby Sullivan, formerly McAuliffe. He was baptized at the Church of St. Finbarr's on the 27th of June, 1840. The sponsors were Humphrey Sullivan and Bridget Callaghan, Exhibit "D" (781).

It will appear later on that Humphrey Sullivan was the husband of Mary Sullivan, who was formerly Mary McAuliffe, a sister of Abigail or Abby McAuliffe. Humphrey Sullivan and Mary Sullivan were the grandparents of the Riordan claimants. Bridget Callaghan, the sponsor of John, was formerly Bridget McAuliffe, a sister of Abigail McAuliffe the mother of John.

Denis Riordan testified (648), that he is 56 years of age, lived at No. 2 Crone's Lane since he was a year and a half, knew the family of Peter Sullivan, and that Peter

Sullivan, his wife, his two daughters, Bessie and Ellen, John Sullivan and Hannah Callaghan constituted the family.

Hannah Callaghan (664) testified that the family consisted of Peter and Abina and three children. Bessie, who died insane, was the oldest; the second was Ellen, and the youngest was John.

Daniel Burke, a schoolmate of John Sullivan at the South Monastery, testified (683) that the family consisted of John's father and mother, John, Bessie and Ellen, and that Hannah Callaghan lived with them; that he was very intimate with John, and recollected John's going to sea.

Denis Murphy, an employee of Beamish & Crawford's Brewery for 53 years, testified (694) that he knew Peter Sullivan remarkably well; that he knew the rest of his family consisted of his son, two daughters, and wife, and Hannah Callaghan, who was the niece of the wife of Peter Sullivan.

Ellen Corbiy, a resident of 114 Evergreen Road, Cork, about 64 years of age, testified (699) that she knew Peter Sullivan and his wife; that Peter Sullivan's wife was Abina or Abigail McAuliffe; that their three children were Bessie, Ellen and John; that Ellen was married to Emmanuel Silva; that Bessie died unmarried at Bull's Lunatic Asylum; that John, when a boy, was employed in Breton's, a jeweler's in Patrick street, for a short time; that Hannah Callaghan lived with Peter and Abina Sullivan, and that she was the niece of Mrs. Sullivan; that she remembered when Hannah Callaghan was brought to the

Sullivan house; that she was an orphan, and was told by the Sullivans that she was the niece of Mrs. Sullivan. She testified that Ellen Sullivan was the godmother of her child. She was cross-examined by Mr. Riddle:

"Q. Were you living in Crone's Lane when you knew John Sullivan?

A. I was in the same house with him" (704).

Ellen Davidson testified (706) that she is about sixty-four years of age; knew Peter Sullivan and his wife well. His wife's name was Abina. Was in Crone's Lane when the Sullivans came there to live. Peter Sullivan was employed at Beamish & Crawford's brewery. They had three children. Their names were Bessie, Ellen and John. Hannah lived with them. Hannah Callaghan was the child of Mrs. Sullivan's sister, and was treated as one of the family. Recollects Bessie going into service as a little girl. She was in the service of Mrs. Lyons. At page 707 she testified that she knew John Sullivan well. She was asked the question if she knew where John was born. She answered, "In the very same house." John lived seven houses away from the one in which she lived. They played together as children. John's mother used to beat her for the way she treated John. John was employed at one time at Mrs. Russell's in Princess street, a confectionery store.

Nora Kiely testified at page 717 that she lived at 85 Tower street; lived there forty-three years. Tower street is fifty or sixty yards from Crone's Lane. Knew Peter Sullivan when he lived in Evergreen street. He worked at Beamish's brewery. He had a son and two daughters. His wife's name was Abina Sullivan. They had three children,

two girls and a boy. The boy's name was John, the girls' names were Elizabeth and Ellen. Knew Ellen perfectly well, but did not know much about Elizabeth. Never knew John. Elizabeth was always in a situation. Worked for a lady by the name of Mrs. Lyons. Ellen married. Her husband's name was Silva. Knew Hannah Callaghan well. Knew her for thirty-five or thirty-six years. She lived with her aunt, Mrs. Sullivan. That Mrs. Sullivan was the wife of Peter Sullivan. Hannah was generally known as the niece of Abby Sullivan. Never heard any claim to the contrary. Hannah Callaghan lived with the Sullivans. Hannah Callaghan, whom she knew living with the Sullivans, is the complainant in this suit. The maiden name of Abina Sullivan before she married Peter Sullivan was Abina McAuliffe. Elizabeth died in Bull's Asylum. The back door of the witness and the back door of Peter Sullivan opened on a small square. There were about forty or fifty yards between the back gates. At page 720, on cross-examination, she testified she had always known the surname of Abina. Knew it was McAuliffe. Remembers when Ellen died. It was about twenty-nine or thirty years ago. Witness buried a child at the same time, and therefore had reason to remember it. Bessie died about twelve or thirteen years ago. Knows she was in Bull's Asylum. Knew a girl in Bull's Asylum who was minding her when she died. At page (721) she testified that she knew that Hannah Callaghan was related to Bessie. The old woman told her she was her niece, a first cousin of Bessie. At page (721) she testifies that she had been in the house with Peter Sullivan about a dozen times.

Bridget Cronin testified, at page (722), as follows: Lives at 11 Abbey street, off of Evergreen street. Is about

sixty years of age. Knew Peter Sullivan and his wife. His wife's name was Abby McAuliffe. They lived in Evergreen street. Their household consisted of their three children, Bessie, Ellen and Johnny. Hannah Callaghan resided in the same house with them. Hannah Callaghan was the first cousin of the Sullivans—Mrs. Sullivan's sister's daughter. She was Mrs. Sullivan's niece and first cousin to the Sullivan children. Bessie never married. Ellen married a man named Silva. Remembers John. He was Peter's son. When she first recollects him, he was about twelve or fourteen years of age. Heard Abby Sullivan say that she had heard from John. Recollects the death of Abby Sullivan, Peter Sullivan and Ellen. Saw their funerals. They were buried in the Botanical Gardens. Hannah Callaghan lived with the Sullivans as long as she can remember. Mrs. Sullivan told her that Hannah Callaghan was her sister's daughter. Peter Sullivan was the last of the Evergreen street household to die. Hannah Callaghan, who is the complainant in this case, is the same Hannah Callaghan whom the witness knew to be the niece of Abby Sullivan. Peter Sullivan worked in Beamish & Crawford's brewery.

Cross-examined by Mr. DONEGAN (725): Had an intimate knowledge of the Sullivans for years. Always knew them in the neighborhood. Knew them in Evergreen street. Heard Abby Sullivan say that she was very fond of her sister's daughter; she thought as much of her as her own children. She was her aunt.

Catherine Murphy testified (728): Is sixty-six years of age. Lives in Crone's Lane, No. 5. Was born in Tower street. Tower street is a few yards from Crone's Lane.

Knew Peter Sullivan and his family well. They were five in number. Peter Sullivan worked at Beamish & Crawford's brewery. His wife's name was Abby, or Abina McAulliffe before her marriage, and Sullivan by her husband's people. They had three children, two daughters and John. The daughters' names were Ellen and Bessie. When she first knew them, they resided in Crone's Lane. They then moved to Evergreen street, nearly opposite Nicholas street. Knew Bessie and Ellen well. Witness and they were schoolgirls at the Presentation Convent school. Bessie went to Mrs. Lyons' to live, as a domestic servant. Often walked with Bessie on the way to Mrs. Lyons'. Bessie lost her reason and was put in an asylum. Ellen and the witness learned shirt-making after they left school. They worked at Dowden's in Patrick street. They worked at the same table. Ellen married a foreigner, a stranger in Ireland. He was a sailor. Witness was present at the marriage. Remembers John Sullivan, Peter Sullivan's son, when he was a little boy. Recollects his going to school. After he left school he got employment in the city. At first he did not sail foreign. Afterwards he did. After he went foreign she never saw him again. Knows that he went to America. He was about twenty to twenty-one or twenty-two when he went foreign. Was very intimate with the Sullivan family. The reason for the intimacy was that her mother and Abina McAuliffe were both from Carrigaline. The intimacy sprang up between the children, and continued. The mothers continued their friendship. The household of Peter Sullivan consisted of himself, his wife, his three children, and Hannah Callaghan. Recollects when Hannah Callaghan went to the Sullivans to live. She was about eight or ten. Knew her in-

timately. Hannah Callaghan's mother's name was Bridget McAulliffe, by her parents, and Bridget Callaghan by her husband. Hannah Callaghan lived with the Sullivans on account of the death of her parents. She was treated by the Sullivans as one of their own children. Heard Hannah Callaghan call Abina aunt. Knows that John Sullivan wrote to his parents. Hannah Callaghan lived with the Sullivans until the break-up of the Sullivan family about thirty years ago. The break-up was caused by the death of the Sullivans. The father of the Sullivan family died last. Hannah Callaghan, the claimant, is the same Hannah Callaghan whom she knew living with the Sullivans.

Nora O'Connell testified (733): Lives in Evergreen street. Was born there. Is fifty years old. Recollects Peter Sullivan, who lived in Evergreen street. He worked at Beamish & Crawford's brewery. His wife's name was Abby McAulliffe. They had three children, Bessie, Ellen and John. Ellen was a friend of the witness'. Bessie took a situation at Mrs. Lyons'. Ellen was at home. Ellen married. Married a foreign sailor of the name of Silva. She had no children. Ellen worked for Dowden's at Patrick street, and for Fowler & Scully of Patrick street, too. Saw John once when he was a young man. He went to America. Witness was very intimate with Ellen. Used to visit Ellen at her house. Knows that the parents received letters from John. Ellen used to tell her that they did. When visiting at the Sullivan house, she saw Hannah Callaghan living with them. Hannah Callaghan lived with them until the household was broken up by the death of Peter Sullivan, her uncle. Heard Hannah Callaghan address Abina Sulivan as Aunt Abby. Ellen Sullivan

died first. Witness attended her funeral. She was buried in St. Joseph's Cemetery, formerly Botanical Gardens. Witness saw her dead. The mother of the Sullivan family died next; then the father. Abina Sullivan died about twenty-nine years ago. Hannah Callaghan was treated as one of the family. Bessie went to the asylum. Witness knows that Hannah Callaghan, the complainant, is the same Hannah Callaghan who resided with the Sullivans. She is the same Hannah Callaghan who called Mrs. Sullivan Aunt Abby. At page 739 she testified that John was a stout, fair young man. Witness was ten or twelve years old when John left.

Margaret Cronin testified (739): Lives in Evergreen street; is over sixty years of age; was born in Evergreen street. Knew Peter Sullivan who lived in Evergreen street. His family in Evergreen street consisted of a daughter, Ellen, a daughter, Bessie, and John. Hannah Callaghan lived with them. The wife of Peter was named Abby. Her maiden name was Abby McAulliffe. Bessie was the oldest of the children, Ellen was next, John was the youngest. Bessie died in a madhouse. Ellen married a foreign sailor named Emmanuel Silva. John went to sea. Witness knew Hannah Callaghan since she was fourteen years of age. Hannah Callaghan always called Abina aunt. Knows that Hannah Callaghan was the daughter of a sister of Abby Sullivan. After the death of Ellen and Bessie, Hannah lived with the old man. Peter Sullivan worked at Beamish's Brewery. Used to see him passing her house. Hannah Callaghan, the complainant, is the same Hannah Callaghan the witness knew as a girl. Peter Sullivan was blind in one eye. Cross-examined by Mr.

Riddle, the witness testified that her house in Evergreen street was about fifty yards from Peter Sullivan's house.

Mary O'Leary testified (745): Resides at No. 2 Crone's Lane. Is a daughter of Ellen Davidson, a witness in the case. Is about 48 or 49. Knew Peter Sullivan in Evergreen street. He used to work at Beamish & Crawford's Brewery. His wife's name was Abby. The family consisted of Peter Sullivan, his wife, their children Ellen, Bessie and John, and Hannah Callaghan. Bessie worked in a situation with Mrs. Lyons. She lost her mind and went to Bull's Asylum. Ellen married a man named Silva, a sea-faring man. She had no family. She is dead. Never knew John. Heard John's mother tell a neighbor that there was a letter from John. Always remembered Hannah Callaghan living with the Sullivans. Hannah Callaghan called Mrs. Sullivan Aunt Abby. Knew that Hannah Callaghan and Ellen, Bessie and John were first cousins. Hannah Callaghan kept house for the old man until he died. Recollects the death of Mrs. Sullivan and of Peter. Ellen died before the parents. They were buried in Botanical Gardens. Hannah Callaghan, the complainant, is the same Hannah Callaghan who called Mrs. Sullivan Aunt Abby, and who kept house for Peter Sullivan.

Peter Sullivan and Abby McAuliffe were married the 22nd of September, 1832, Exhibit "A" (776). Their coffin plates were found together in the grave of their daughter Ellen Silva, who John Sullivan made oath was his sister, and on whose estate letters of administration were granted to him as next of kin, namely, her brother.

So far, then, as relationship is capable of demonstration, the evidence in this case demonstrates that John Sullivan of Seattle was the brother of Bessie Sullivan and Ellen Silva, and was the son of Peter Sullivan and Abigail Sullivan, whose maiden name was Abigail McAulliffe. Marie Carrau was convinced of these facts (267). Her counsel in Ireland was also convinced (115).

It remains, then, to show that complainants Hannah Callaghan and Edward Corcoran are the first cousins of John Sullivan.

We ask the Court to bear in mind that the counsel for the defendants fought vigorously the proposition that John Sullivan was the son of Peter and Abigail and the brother of Bessie Sullivan and Ellen Silva.

It is not surprising, therefore, to find them trying to contend against the overwhelming proof that Hannah Callaghan is the niece of Abigail Sullivan, being the daughter of her sister, Bridget Callaghan, and that Edward Corcoran is the nephew of Abigail Sullivan, being the son of her sister, Margaret Corcoran. The way in which they seek to overcome the case made by complainants is not by proof to the contrary, but by denying the identity of the man Edward Corcoran with the Edward Corcoran of Carrigaline, the nephew of Abigail, and by showing that the baptismal register states the name of Hannah Callaghan's grandparents as Denis McAulliffe and Margaret Murphy, and Corcoran's grandparents as Daniel McAulliffe and Margaret Murphy.

Hannah Callaghan, the complainant, is the daughter

of Bridget Callaghan, formerly Bridget McAulliffe, sister of Abina McAulliffe Sullivan, mother of John Sullivan. Corcoran, the complainant, testifies at page 592 that when about 17 years of age, he was living in Cork. He was introduced to Hannah Callaghan as his first cousin at John Sullivan's house, by his aunt. Corcoran stayed at the house of Humphrey Sullivan, who lived in Gillabbey Lane.

Mary Riordan, second cousin of John Sullivan, testies, at page 615: Knows Johanna Callaghan; knows that Hannah Callaghan was the niece of Peter and Abina Sullivan. She lived with them. She is one of the claimants of John Sullivan's estate. Always knew her to be a cousin of John Sullivan. Heard of Bridget McAuliffe. She was Hannah's mother. Heard that Bridget was a sister of witness' grandmother. Recollects her own grandfather, who was Humphrey Sullivan. Witness' mother's name was Margaret Sullivan. Peter Sullivan was employed at Beamish & Crawford's Brewery. He was a pensioner of the brewery. The family history she heard from her mother. Witness called Abina McAuliffe Aunt Abby. She was witness' aunt. Peter Sullivan was the nephew of Humphrey Sullivan. Peter and Humphrey married sisters. It was regarded as a peculiar thing that uncle and nephew should marry two sisters. Witness' mother was a first cousin of both Hannah Callaghan and Edward Corcoran.

Kate Riordan, second cousin of John Sullivan, testified (page 628): Knows Hannah Callaghan. She is a first cousin of my mother's—my second cousin. Heard from my mother that Hannah Callaghan was a first cousin to John Sullivan. Hannah Callaghan was partly brought up by

my mother's sister, John Sullivan's mother. Heard from my mother that my grandmother and John Sullivan's mother were sisters.

Margaret McGrath, formerly Riordan, testified at page 635: Is a daughter of John Riordan and Margaret Riordan, and a sister of Catherine and Mary Riordan, who have testified in this case. My mother's maiden name was Margaret Sullivan. She was the daughter of Humphrey Sullivan and Mary McAuliffe. Heard from my mother that Mary McAuliffe had three sisters; one was Abina, one Bridget and the other Peggy. Abina was married to Peter Sullivan. I knew Peter Sullivan. He worked at Beamish & Crawford's Brewery. When too old to work he was pensioned at nine shillings a week. I knew Ellen and Bessie. I did not know John. Ellen was my godmother. Ellen was married. Her husband's name was Emmanuel de Silva. He was a sailor. Bessie was a servant at Mrs. Lyons'. She died in Bull's Asylum. Hannah Callaghan lived at the house of Bessie and Ellen. She was a member of the family. Heard my mother say that Hannah Callaghan was her first cousin, and a first cousin of Bessie and Ellen. Heard my mother say that Abina Sullivan was Hannah Callaghan's aunt, and my grandmother was her aunt. I went to Peter Sulivan's house. I there saw Hannah Callaghan, my aunt, my uncle and Ellen Sullivan, who was working in a room off the kitchen. Bessie was at Mrs. Lyons'. I remember Peter, the father, who was a small, low-sized man, and blind of one eye. He took me slanging from school one day. He took me to the priest. Mrs. Sullivan was a low-sized, little woman.

Hannah Callaghan, the complainant, testified, at

page 663: My father's name was William Callaghan. Mother's name was Bridget McAuliffe. Was born seven miles outside the city, in the parish of Carrigaline. I was reared in the city of Cork; came to Cork when very young. Came to the house of my uncle, Peter Sullivan's wife, Abina McAuliffe, who married Peter Sullivan. That was after the death of my mother. Lived with them up to the death of my uncle and aunt. They had three children, Bessie, who died insane, the second was Ellen, and the youngest John. I supported myself partly by crochet work. There was a great demand for that thirty years ago. Lived with my uncle in Crone's Lane. Afterwards went to 10 Evergreen street. Ellen died in her father's house. She was married. Bessie died insane. Ellen was married to Emmanuel de Silva. His occupation was soliciting business. Remember Ellen's death. She never had any family. Bessie died insane in Bull's Asylum. She never married. She was in service at Mrs. Lyons', Clonville Quay, for forty years. I asked Mrs. Lyons, when writing to John Sullivan, to remember me to John Sullivan, my first cousin. John went away for twelve months and then returned. After the death of the father John's letters went to Mrs. Lyons'. Before John went to sea he worked at some jeweller's store in Cork, in Patrick street—Beston's is the name. Peter Sullivan was employed in Beamish & Crawford's Brewery. I carried his breakfast to him. He was pensioned at nine shillings a week. The last pension he received was on a Friday. He died the Wednesday following. I remember the names of my mother's sisters. Mary McAuliffe, Peggy McAuliffe, Bridget McAuliffe who was my mother, Abina or Abby. Peggy married a man named Corcoran, in Carrigaline. Knew that John used to write

to Mrs. Lyons. I asked Mrs. Lyons to remember Hannah O'Callaghan to John, and when he will hear the name O'Callaghan he will know I am here. It was after Bessie had gone to the asylum. Knew Humphrey Sullivan. He was my Aunt Mary's husband. I think Peter Sullivan and Humphrey Sullivan were nephew and uncle. Humphrey was the uncle. They married sisters. One was married to Mary and the other to Miles McCarthy. Mary was a sister of Abby. They had three children, Peter, Bessie and Margaret. Margaret was the daughter of Humphrey Sullivan. She married John Riordan. John Sullivan was about sixteen or eighteen when he went away for good.

Timothy Hurley (certified at page 668-669): He was a schoolmate of John Sullivan at the South Monastery. Knew that Hannah O'Callaghan was a member of the family of Peter and Miles Sullivan; knew John's cousin. Always heard of Hannah as a niece of the Sullivans.

Bessie Murphy (certified at 669): The testimony of this witness is quite important. Has been working for fifty years in Reynolds & Crawford's Brewery. Knew Peter Sullivan remarkably well. He lived in O'Connell's Lane. Knew the rest of his family, his son, two daughters, and his wife. His son's name was John. The daughters' names were [illegible]. The son went to Cincinnati or a similar city and settled down in business. Used to write letters for Peter Sullivan to his son John. Addressed some letters. Knew Hannah O'Callaghan for years. Knows that Hannah O'Callaghan was a niece of Peter Sullivan's wife. Heard Peter Sullivan say she was his niece. Bessie died in the asylum. Ellen Sullivan married a Portuguese captain. Peter Sul-

livan worked in the cask department at Beamish & Crawford's. He lost an eye. It was misshapen or lost. His nickname was Lord Nelson as long as I can remember. Know that Peter Sullivan was a pensioner of Beamish & Crawford. His pension was nine shillings a week. He got that pension up to the time of his death.

Cross-examined by Mr. DONEGAN (page 696): Heard Peter say that Hannah was his niece. She was known as his wife's niece. Knew the Sullivans intimately. Knew them before John went to America. Was living about fifty perches from them. Cross-examined by Mr. Riddle (page 697): Knew John. He was about fourteen years of age when I first saw him. He was about sixteen or seventeen when he first went away. Saw him only twice afterwards. Knows that Peter was pensioned because I wrote for him the letter to get the pension. I often heard Peter Sullivan speaking of Hannah Callaghan to my father and mother as his niece. They were very intimate. I wrote to John Sullivan in America. The address was Seattle. I do not recollect the particular address. That was over thirty years ago, if not more. (By Mr. Howe—page 698): I knew the maiden name of Peter Sullivan's wife. It was Abby McAulliffe. Cross-examined by Mr. Riddle: Peter found out the address of John because John wrote to his father. I saw the letter. I do not think Peter was able to write. I wrote for him once or twice.

Edward Corcoran, complainant in this suit, is Edward Corcoran of Carrigaline, the son of John Corcoran and Margaret McAulliffe, who was a sister of Abigail McAulliffe, afterwards Abigail Sullivan, mother of John Sullivan.

Corcoran testified at page 590 as follows: My mother's maiden name was Margaret McAulliffe. She was called Peggy. I lived in Carrigaline until I was about sixteen years of age. I was apprenticed to a harness maker, Dan Mahoney. I served with him three years, until I was sixteen. I then went to the Grand Parade in Cork, to a man named Casey. I lived in Cork until I was twenty years. I knew the Sullivans of Gillabbey Lane. I also knew the Sullivans of Crone's Lane and Evergreen street. The Evergreen street Sullivan worked in Beamish & Crawford's Brewery. The maiden name of the wife of the Evergreen street Sullivan was McAulliffe. My mother and she were sisters. I knew three McAulliffe sisters, my mother and my two aunts. I was introduced to Hannah Callaghan by my aunt as my first cousin. That aunt was the mother of John Sullivan. I have been living Dublin forty-two years. Never returned to Cork until twelve months ago. I think my aunt who lived in Gillabbey Lane was named Mary. She was married to Humphrey Sullivan. They had three children. The youngest was the same age as myself. His name was Denis. There were one boy and two girls. I knew John Sullivan personally. His father worked in Beamish & Crawford's Brewery. He had two sisters. John was about my own age. His sisters were older. I lived in Gillabbey Lane with my aunt.

Mary Mahoney testified (page 605): Have lived in Carrigaline since I was eight years old. When living in Carrigaline I knew Edward Corcoran. His father's name was John Corcoran. His mother's name was Margaret McAulliffe. She was called Peggy. Peggy McAulliffe was her maiden name. I recollect the house they lived in. The

landlord of the house was Power. Edward Corcoran was bound to the trade of harness-maker in Carrigaline. The name of the man to whom he was bound was Dan Mahony. He left Carrigaline and came to Cork. He occasionally visited Carrigaline. When I saw him last year, I had no difficulty in recognizing him. He was very old, but his features were the same. The Ned Corcoran who is here to-day is the same Ned Corcoran I knew as a boy in Carrigaline, the son of John and Peggy Corcoran.

Michael Power testified (page 608): I was born and reared in Carrigaline. I remember a playfellow named Edward Corcoran. He lived in the house of my father. His father's name was John Corcoran. His mother's name was Peggy. John Corcoran was a tenant of my father's, and a bad tenant he was. Ned and I used to play together. He was apprenticed to Dan Mahoney, a harness-maker. He ran away and did not finish his time with Mahoney. He went to Cork. He is older than I am. I saw him in Carrigaline once or twice after he went to Cork. I had no difficulty in recognizing him recently. He has aged. We talked together and he remembered Power. The Ned Corcoran who is here to-day is the same Ned Corcoran I knew in Carrigaline. I knew his two brothers and two sisters perfectly well. There were John Corcoran, Denis Corcoran, Maria Corcoran, and Margaret.

At page 610 Power was asked whether he saw Edward Corcoran last year. Certainly. I would know him anywhere. At page 611 he said, I would identify him among a thousand.

When Canon Carey was called as a witness for Marie

Carrau, he proved Exhibits "R," "S," "T," and "U" (793-794). These exhibits show the baptism of Mary, John, Denis and Margaret Corcoran, the children of John and Margaret Corcoran, and corroborate the witness Power.

Michael Cooney testified (610): Reside in Carrigaline. Went to Carrigaline when an infant. I was once a nailer, but that is a thing of the past. I am a shopkeer now. I recollect Ned Corcoran, who is here to-day, as the boy I used to play with in Carrigaline. He is older than I am. Common sense tells me from the day I began earning, what age I am. I am about sixty-two. I calculate from the time I went to nail-making. Corcoran and I were apprenticed about the same time. We were playfellows from boyhood until we were apprenticed. His father's name was Jacky Corcoran. His mother's name was Peggy. (Page 612.) The Corcorans were tenants of Mr. Power. Ned Corcoran was bound apprentice to Dan Mahoney, the harness-maker. I recollect Ned's leaving Carrigaline and going to Cork. I saw him about a year ago. I did not know he was in the world, but I recognized him. The Ned Corcoran who testified to-day is the same Ned Corcoran I used to know as a boy in Carrigaline (page 612). When I saw him I identified him. I told him how men change. I could not believe in the change from a boy. I felt as if myself was old, and I do not feel old. I felt very sorry, you know, that kind of feeling. I do not believe I am so old at all. (Page 613). I recollect the mother of Corcoran. Her name was Peggy Corcoran. Corcoran pointed out to me the very place where my step-father worked in Carrigaline. (Page 614).

Mary Riordan, forty years old, grand-daughter of Humphrey Sullivan and Mary McAuliffe, testified (page 615), as to Corcoran's relationship.

Kate Riordan, a sister of Mary Riordan, testified (page 628) as to Corcoran's relationship.

Margaret McGrath, a sister of Kate and Mary Riordan, testified at page 635.

Mary Jenkins testified (page 642): I reside on Grand Parade. Knew Humphrey Sullivan and his wife. They lived in Gillabbey Lane. Humphrey Sullivan's wife's name was Mary McAulliffe. She had a sister whose name was Peggy. She married John Corcoran of Carrigaline. I knew Mary Sullivan, that is, Mary McAuliffe, and Peggy McAuliffe, well. I remember another sister, Abina. She married a man named Sullivan. The family of Humphrey Sullivan and Mary Sullivan were Margaret, Denis or Michael, and John. She had two sons and one daughter. Peggy McAuliffe married John Corcoran. I met her at Mrs. Sullivan's house, Mary McAuliffe's house. I knew all of the children of Peggy Corcoran. I recollect Ned Corcoran. He came from Carrigaline to Cork. He came to my house in Brandy Lane. Ned Corcoran's father had a sister, Nancy Corcoran, that is Ned's aunt, and my father was married to her on his second marriage. (Page 643.) Ned is a harness-maker. He used to stop at his Aunt Mary's right across the lane. He also used to visit Abina. The Ned Corcoran who testified to-day is the same Ned Corcoran I knew, the son of Peggy McAuliffe.

William Cochrane, former sheriff of King County, testified at page 150 as follows: That he met Sullivan in the

early seventies. He (Cochrane) was running a logging camp at Lake Washington. He was dealing with Crawford & Harrington. He went there to get some tobacco for his logging camp. They introduced him to John Sullivan, who had a store nearly opposite Dexter Horton's bank. Sullivan asked Cochrane where he was from. Cochrane told him from County Cavin, about 40 miles from Dublin. Sullivan told Cochrane that he had a cousin in Dublin. Cochrane asked him how he spelled his name, and Sullivan spelled it Corcoran. Cochrane then told him it was a different family, that he spelled his name Cochrane.

Hannah Callaghan also testifies as to the Corcoran family at page 667.

As far as parol evidence is concerned, therefore, it is clear that Edward Corcoran and Hannah Callaghan are first cousins of John Sullivan. The record evidence in the case establishes the followings facts: That Abina Sullivan, the mother of John, was, prior to the marriage, Abina McAuliffe. She married Peter Sullivan and became Abina Sullivan. (Exhibit "A," p. 776.) The witnesses to her marriage were Michael Murphy and Norry McAuliffe, and the marriage took place Setpember 22, 1832. The father of Abina Sullivan, therefore, must have been named McAuliffe.

By Riordan Exhibit No. 1 (page 797), we find that Mary McAuliffe was married to Humphrey Sullivan August 23, 1828. There is no baptismal certificate of either Abina or Mary McAuliffe. By Carrau's Exhibit "C" (page 809), it appears that Margaret McAuliffe was baptized March 20, 1810, and that she was a child of Daniel Mc-

Auliffe and Margaret Murphy. By Carrau's Exhibit "A" (page 809), it appears that Bridget McAuliffe was baptized October 28, 1804, and that she was a child of Denis McAuliffe and Margaret Murphy, but Canon Carey, at pages 754-764, testifies that in his opinion Denis was written by mistake instead of Daniel. By Carrau's Exhibit "B" (page 809), it appears that on July 22, 1807, Honora McAuliffe was baptized, and that she was the child of Daniel McAuliffe and Margaret Murphy. The oral testimony shows that there were four McAuliffe sisters, Abina, Margaret, Bridget and Mary. Honora seems to have been lost sight of, but we find that Norry McAuliffe, which is evidently a diminutive of Honora, was a witness at the marriage of Peter Sullivan and Abby McAuliffe, and that the other witness to the marriage was Michael Murphy, who evidently was a relative of the mother of Abina McAuliffe, who prior to her marriage with Daniel McAuliffe was Margaret Murphy. From Peter Sullivan and Abby his wife were descended Elizabeth Sullivan (Exhibit "B," p. 778), Ellen Sullivan (Exhibit "C," p. 780), and John Sullivan (Exhibit "D," p. 781). Margaret McAuliffe married John Corcoran (Exhibit "G," p. 785), and from them were descended Ned Corcoran, complainant (Exhibit "I," p. 786), Mary Corcoran (Exhibit "R," p. 793), John Corcoran (Exhibit "S," p. 793), Denis Corcoran "Exhibit "T," p. 794), and Margaret Corcoran (Exhibit "U," p. 794). Bridget McAuliffe married William Callaghan (Exhibit "F," p. 785), and from them is descended Hannah Callaghan, the complainant (Exhibit "H," p. 786). Mary McAuliffe married Humphrey Sullivan (Riordan Exhibit No. 1), and from them was descended Margaret (Riordan Exhibit No. 2), who married John Riordan (Riordan Ex-

hibit No. 3), and from John Riordan and Margaret were descended Catherine (Riordan Exhibit No. 4), Mary (Riordan Exhibit No. 5), and Margaret (Riordan Exhibit No. 6, pp. 797-803), who are second cousins of Hannah Callaghan and Edward Corcoran. It will be noted by the Court that the sponsors of John Sullivan are Humphrey Sullivan and Bridget Callaghan. The oral evidence is clear that Bridget Callaghan was a sister of Abby Sullivan, formerly McAuliffe, and Exhibit "F," page 785, shows that Bridget Callaghan was, prior to her marrige with William Callaghan, Bridget McAuliffe. The sponsors of Ellen Sullivan were William Murphy and Mary Sullivan (Exhibit "C," p. 780), the Mary Sullivan evidently being the sister (of Abby Sullivan, formerly McAuliffe), who married Humphrey Sullivan. Ellen Sullivan married Emmanuel de Silva (Exhibit "E," p. 783), and the witnesses to that marriage are Peter Sullivan and John Sullivan. Documentary evidence, therefore, clearly connects Abigail or Abby Sullivan, formerly McAuliffe, with Mary McAuliffe, the wife of Humphrey Sullivan, with Margaret McAuliffe, the wife of John Corcoran, and with Bridget McAuliffe, the wife of William Callaghan, and with Honora McAuliffe, the daughter of Daniel McAuliffe and Margaret Murphy.

Exhibit "M" (page 788) is the affidavit of John Sullivan that Ellen Silva was his sister, and that he was her only heir. Exhibit "N" (page 789) is the affidavit of John Sullivan that Eliza Sullivan was his sister and that he was her only heir. Exhibits "O" (page 790) and "P" (page 791) are the grants of administration to John Sullivan on the two estates. Exhibit "Q" (page 792) is the

bond of John Sullivan on which Eugene F. Collins is the surety. In the probate proceedings it clearly appears that John Sullivan of Seattle is the John Sullivan who administered on the two estates. To show the Court how the examination of the witnesses was conducted in Ireland, we call the Court's attention to page 751. Mr. Donegan offered to read into the record a certificate which had been filed in the probate proceedings, accounting for the delay in taking out administration on the estate of Ellen Silva. Mr. Howe objected that that was not the proper way to introduce the document in evidence, and that it tended to incumber the record. Mr. Donegan, who had been disregarding all objections which had been made to his method of cross-examination, upon this objection being made, said: "Having regard to the objection that has been made by complainants' attorney, I shall not read the document." It is very evident that his object was to try to create an impression on the mind of the Court that there was something in the document which was prejudicial to the complainants. Counsel for complainants therefore immediately withdrew the objection, and the following instrument was read into the record:

"Cork District Registry.

In the Case of ELLEN SILVA, Deceased.

We hereby certify that the cause of the delay in taking out administration in this case arose from the administrator's thinking it scarcely worth while doing so, as the estates were so small and his residence being in Seattle, U. S. A.

Dated this 25th day of May, 1900.

WYNNE & WYNNE,
Solicitors, Cork."

This document also establishes the identity of John Sullivan of Seattle with the John Sullivan who administered on the estates of his deceased sisters.

We think, therefore, that the documentary evidence in this suit, taken in connection with the oral evidence of the witnesses, furnishes conclusive proof that John Sullivan was the son of Peter Sullivan and Abby his wife; that Hannah Callaghan is the daughter of Bridget Callaghan, the sister of Abby Sullivan; that Ned Corcoran is the son of Margaret Corcoran, a sister of Abby Sullivan; and that the two complainants are, therefore, first cousins of John Sullivan of Seattle.

The letters of John Sullivan written to Eugene F. Collins, to Thomas S. Lyons, to Mrs. Lyons and to Mr. Gregg, the solicitor, in Cork, show conclusively that John Sullivan of the Sullivan Building, in Seattle, Washington, was the man who administered on the estate of Bessie Sullivan and Ellen Silva. The marriage and baptismal certificates show that his father and mother were Peter and Abby Sullivan; that his father was the Peter Sullivan who worked in Beamish & Crawford's Brewery is established beyond the possibility of doubt by the testimony of Mr. Hilliard and of Denis Murphy, and the books (pages 691-692) of the brewery prove that Peter Sullivan was in receipt of a pension from the brewery; that that pension was paid by Mr. Hilliard (page 692); that the application for the pension was prepared by Denis Murphy, and Denis Murphy testifies that he wrote letters for Peter Sullivan to John and read letters from John to Peter, and that the John Sulli-

van to whom he wrote and from whom he read letters was John Sullivan of Seattle.

We submit that the evidence demonstrates beyond doubt the relationship of complainants to the deceased.

The following genealogical table gives the family history within a small space:

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VIII.

THE CIRCUIT COURT CORRECTLY REFUSED TO ISSUE A SECOND COMMISSION FOR THE TAKING OF TESTIMONY IN IRELAND.

Assuming that counsel for the defendant Carrau will make the same argument upon the facts which they made in the Court of Appeals, it is unnecessary to reply at length to the comments upon the testimony taken in Ireland in behalf of the complainants. It is sufficient to show to this Court that counsel for defendant have not carefully read that testimony. They take the position that the Riordan sisters are not to be believed because they testify to facts occurring before they were born. A reference to their testimony will show that they were testifying to declarations made by their mother, who had died since making the declarations, and the declarations were admissible under the general rule permitting matters of pedigree to be proved by the declaration of a relative who died since making the declaration. The main argument, however, of counsel for defendant is based on affidavits and a certified copy of a hospital book, which were not put in evidence but which were submitted to the Circuit Court for the purpose of having that Court order a second commission to take the testimony of the custodian of that book as well as the testimony of certain other witnesses. Those affidavits and the extract from the hospital book do not prove anything. They were submitted to the Circuit Court for the purpose of endeavoring to delay the trial of the cause, not for the purpose of overthrowing complainants' case. To show

how counsel for Marie Carrau grasp at straws, we call the attention of the Court to the fact that because one witness, Ellen Davidson, testified, at page 707, that Hannah Callaghan was brought by Abina Sullivan out of the Union after the death of her father and mother, they procured an extract from the workhouse books of the Cork Union, for the purpose of trying to induce the Judge of the Circuit Court to believe that the Bridget Callaghan, who was in the workhouse, was the mother of Hannah Callaghan, the complainant, and that Hannah Callaghan, the complainant, was the Hannah Callaghan who was in the workhouse in Cork. They then argue that those two persons cannot be the persons mentioned in the Carrigaline records. It is perfectly apparent that they are not the same persons. Complainants never claimed that either Hannah Callaghan or her mother was in the workhouse in Cork. The extract from the workhouse books shows that the Bridget Callaghan there mentioned died in the workhouse. If the Hannah Callaghan there mentioned was removed from the workhouse, it would be necessary for the date of her discharge to have been entered in the same column in which the date of Bridget Callaghan's death was entered. There is no entry there as to the disposition of Hannah Callaghan, or of the Timothy Callaghan, mentioned in the workhouse record. It is evident, therefore, either that the workhouse record does not state the facts correctly, or that the Hannah Callaghan who entered the workhouse at the same time with the Bridget Callaghan there mentioned, is not the Hannah Callaghan who is the complainant in this suit, for the reason that no one contends that the Hannah Callaghan who is the plaintiff in this suit is an inmate of a workhouse, nor is there a par-

ticle of proof that she has ever been the inmate of a workhouse. It is also apparent from the extract from the workhouse books that the Bridget Callaghan there mentioned was only thirty years of age. She could not, therefore, possibly have been born in 1804. Neither could the Hannah Callaghan there mentioned as six years of age be the complainant in this suit, who is sixty-five years of age, for the workhouse extract deals with the year 1848. The fact of the matter is, that counsel for Marie Carrau seized upon the remark of the witness Ellen Davidson, that the complainant, Hannah Callaghan, was brought out of the Union by Abina Sullivan, and upon that they built the theory that the Bridget and Hannah Callaghan mentioned in the workhouse record were respectively the mother of complainant and complainant. The proposition, however, is too absurd to be seriously considered. That Hannah Callaghan, complainant in the present suit, lived for many years in the Sullivan family, is established beyond controversy. The Court is asked to believe although Mrs. Sullivan did have a sister named Bridget Callaghan, who had a child named Hannah Callaghan, who on the death of her mother needed the care of her aunt, that Mrs. Sullivan took from the workhouse a child named Johanna Callaghan, the daughter of a Bridget Callaghan, and made her one of a poor struggling family, although the child was no relation to her. The endeavor of counsel for Marie Carrau to establish by such evidence that complainant is not Hannah Callaghan, the daughter of Bridget Callaghan, the sister of Abina Sullivan, is a confession that Bridget Callaghan was a sister of Abina Sullivan, and that her daughter Johanna was a niece of Abina Sullivan. The documentary evidence in the case, and the oral testimony

of the witnesses, is conclusive that Hannah Callaghan, who is the complainant in this suit, is the Hannah Callaghan who was the daughter of Bridget, the sister of Abina. Even if it were possible to entertain this far-fetched theory of counsel for Marie Carrau, it would amount to nothing against Edward Corcoran. The confession by this argument of counsel for Marie Carrau, that the four McAuliffes were sisters, and that Edward Corcoran is the son of one of those sisters, would entitle him to recover. But in this case we have Edward Corcoran admitting that Hannah Callaghan, the complainant in this case, is his first cousin, the daughter of his aunt, Bridget Callaghan.

Another document which was submitted to the Judge after he had the case under consideration, for the purpose of obtaining the issuance of a commission, is a copy of a search from a public office made by Eugene F. Collins, showing the census return of Crone's Lane for the years 1841 and 1851. It appears therefrom that in 1841, the Sullivan family were residents of Crone's Lane. Hannah Callaghan's name does not appear. No one contended that in 1841 Hannah Callaghan was a member of the Sullivan family. Hannah Callaghan testified that in 1848 she carried Peter Sullivan his breakfast when he was at work in the brewery. The census return for 1851 does not show Hannah Callaghan as a member of the Sullivan familiy. It may be that Hannah Callaghan, testifying in 1901, gave the wrong date when she said that in 1848 she carried Peter Sullivan his breakfast. The matter is entirely immaterial. People of this class in Ireland have very little idea of time. A difference of five, ten, fifteen, or even

twenty years, when testifying many years afterwards, does not make much impression upon them, and Hannah Callaghan might well have made the date when she became a member of the Sullivan family a few years different from what it actually was. As an instance of the want of appreciation of time by some people, we have only to refer to the affidavit of Eugene F. Collins, a solicitor in Dublin, which was also submitted to the Circuit Court by counsel for Marie Carrau, in which he states that he is twenty-one years of age, although it appears from the evidence in the case that for many years he had been pursuing the profession of a solicitor. If a man of the intelligence requisite for practicing the profession of the law is uncertain as to his age, it is not remarkable that a witness of the class of Hannah Callaghan may have made a mistake of a few years when she testified to events which occurred fifty years before.

Another affidavit is that of James J. Mooney. It can afford the Court no light. The testimony of Cunningham (page 483) shows that Sullivan, when in Ireland, was not looking for cousins. Sullivan had known Cunningham for thirty years, and was godfather to his son. The first person to whom Cunningham mentioned the conversation in which Sullivan said that he had cousins, but was not looking for them when in Ireland, was Mr. Hays, counsel for Marie Carrau. If Mooney's testimony had been taken, and he had testified to the facts stated in the affidavit, the testimony would be of no value. The affidavit of Cotter, the man who made the extract from the workhouse books, is not that he gave a certified copy of the books relating to all the Bridget Callaghans, and all the Johanna Cal-

laghans, who appeared in those books, but only that he had been applied to by Mr. Donegan, the solicitor for Marie Carrau, for an extract relating to a certain Bridget Callaghan at a certain time. It is apparent that Mr. Donegan was endeavoring to obtain from Mr. Cotter information merely for the purpose of casting suspicion upon complainant Hannah Callaghan in this action; not that he was putting the Court in possession of all that the books of the workhouse might show, so that the Court could see how many Bridget Callaghans there were in Cork with children named Hannah.

Another affidavit submitted to the Circuit Court was that of Eugene F. Collins. By reference to the affidavit, the Court will see that Collins states that, having been put in communication with John Sullivan by Mrs. Lyons, he wrote to Sullivan, and that Sullivan wrote to him, Collins, a letter, in which he stated that he, Sullivan, was the only relative alive of his deceased sister. Further in the affidavit Collins states that he prepared a power of attorney, which he sent to Sullivan, who signed it and swore to it, and that the power of attorney contained the following final statement: "I am the only relative of the said deceased living." Collins further states that the power of attorney was defectively executed; that it lay around his office for years; that it was stamped with a ten-shilling stamp; that he cannot remember whether he returned it to Sullivan or whether it was mislaid. Fortunately for complainants, the letters of Mr. Collins to Sullivan are in the record (108-110), and the original letters from Sullivan to Collins were introduced by complainants in their case in chief. The Court will see by reference to those

letters (529-530) that Sullivan never told Collins that he was the only relative of his sister, but that he was the only *heir* of his sister, and by reference to the affidavits filed by Sullivan in the Probate Court in Ireland (Exhibit "M," page 788); Exhibit "N," page 789), the Court will see that Sullivan made the statement that he was the only heir of his sister. The Court will also see that Collins never called to Sullivan's attention the fact that the power of attorney was defectively executed. On the contrary, he acknowledged its receipt as perfected. He did not write to Sullivan that he could not procure administration because of the defective execution of the power of attorney, but because Mr. Roach refused to become administrator, and this letter was not written until after Sullivan had written to Collins to know how the administration proceedings were progressing. Correspondence between them then ceased for a period of nearly two years, and then Collins wrote to Sullivan, enclosing a draft of a new power of attorney to be executed by Sullivan. In it he gave directions as to what it should include. But the Court will find no direction to Sullivan to state that he was the only relative of his deceased sister.

Again, in his affidavit Mr. Collins states: "Mrs. Lyons sent me a private letter, in which she states that she had a recollection of a respectable woman who lived in Sunday's Well (the opposite side of the city from Evergreen street), asking her to send a kind message to John Sullivan. I copied out this portion of the letter and handed it to Mr. Wright." The Court will observe the use of the word "respectable." There was an effort made to show that Hannah Callaghan was not a respectable woman,

because she was in the habit, as a great many of her class are, of indulging in the drinking of too much porter. But, by reference to page 81 of the record, the Court will find an affidavit setting forth a copy of the extract from the letter of Mrs. Lyons to Collins, which Collins furnished to Mr. Wright. The extract is certified to by Collins as being correct. The word "respectable" does not appear in that extract, but the statement does appear in that extract that the woman who called on Mrs. Lyons and asked her to send a message to John Sullivan was a cousin of the Sullivans. In order to induce the Circuit Court to issue a commission, Mr. Collins supressed the fact that the woman who spoke to Mrs. Lyons was a cousin of the Sullivans, and stated in his affidavit that Mrs. Lyons said she was called on by a respectable woman. When the Court reads the testimony in the case, and considers the action of Mr. Collins in endeavoring to keep out of the record the letters from Sullivan to him and to Mrs. Lyons, you will wonder what was in the letter of Mrs. Lyons to Collins which prevented Collins from letting counsel for complainant see the entire letter. It seems to us that the inference is irrestible that either the letter contained information which was exceedingly valuable to complainants, or that it stated that Mrs. Lyons and Collins should be heavily paid for furnishing the information which it contained. Further in his affidavit Collins endeavors to show that the letters written by Sullivan, which were put in evidence by counsel for the complainants in their case in chief, were wrongfully obtained from him. That charge was fully answered by the affidavits set forth at pages 68-82, filed in opposition to the application of Marie Carran for a second commission. But the Court will notice that Mr. Collins did not

make the statement which Mr. Hays read into the record in this case, that the letters had been stolen from him. It is evident that he did not care to make that statement under oath. He further states that the letters contained frequent reference to the fact that John Sullivan had no relatives, and contained evidence of a most material kind, which, in the interest of all parties, should be put in evidence. Counsel for complainants placed in evidence all of the letters from Sullivan to Collins and to Mrs. Lyons and to Mr. Lyons. A reading of those letters will satisfy the Court that Collins' statement is not true, that Sullivan ever stated that he had no relatives. The strange part of the whole proposition is that when counsel for complainants called upon the witness-stand Mr. Denny, who had for twenty years been a paying teller in the Bank of Dexter Horton & Co., and who was familiar with the signature of John Sullivan, and who testified that the letters submitted were written by Sullivan, Mr. Hays objected to their reception in evidence. It is plain that the reason of this objection was, that they did not wish these letters to go in evidence unless Collins could be put on the witness-stand to prove them. Further in his affidavit Mr. Collins proceeds to argue that if Hannah Callaghan had been a member of the Sullivan family in 1841 and 1851, her name would have appeared in the census returns, a copy of which he attaches to his affidavit. We do not think that the Court will assume that, because Hannah Callaghan's name did not appear in the census return as a member of the Sullivan family in the year 1851, that therefore ten or more witnesses have perjured themselves when they swore that she was a member of the Sullivan family as far back as they could remember. The fact, however, that

Mr. Collins undertakes to argue the matter in his affidavit sufficiently shows his relationship to this case, and when borne in mind that the name "Collins" was originally written in the authorization for the appearance of a solicitor in behalf of Marie Carrau, and that upon Mr. Hays being given notice that Mr. Collins was to be examined as a witness in behalf of complainant, the name "Collins" in the original authorization was erased, and the name "Donegan" inserted, it must be perfectly aparent to the mind of the Court that Mr. Collins has all along been acting in collusion with Mr. Donegan, and been endeavoring to do all that he could to defeat the complainants' case.

By reference to the authorization to appear, at pages 810-811, the Court will observe that it is dated at Seattle, the 25th day of October, 1901. It will also be observed the name Donegan is in the authorization as printed, and that he is described as a solicitor of the city of Dublin. It is in evidence, and Donegan's own letters show, that Donegan was a solicitor resident in Cork.

On the 28th day of October, 1901, a notice of the taking of depositions was served on counsel for Marie Carrau, and in that notice the name appears "Eugene Collins" (pages 52-53). During the progress of the taking of the depositions, counsel for complainant became suspicious of Mr. Collins, and believed that he was acting in collusion with Mr. Donegan, and though nominally he was appearing in behalf of a claimant who had filed a claim in the State Court, he was in truth and in fact acting in behalf of Marie Carrau, and that a trap had been laid so that when counsel for complainants placed Collins upon the witness-stand

to prove the letters which Sullivan had written to him and to Mr. and Mrs. Lyons, Collins would endeavor to inject into his testimony matter which was untrue, but which would have for its object the injury of the complainants' case. Counsel for complainants therefore demanded that each solicitor appearing should file with the Commissioner his authority to appear. Upon this being done, Mr. Donegan filed the authorization just mentioned. The authorization demonstrates that Collins was all the time in the employ of Marie Carrau as her solicitor. The taking of the testimony of the witnesses was to have been begun on the 15th day of November, 1901. The authorization to appear was dated Seattle, October 28th, 1901. It had only time, therefore, by the ordinary course of mail, to reach Mr. Collins. In order to remove any suspicion which counsel for complainants might have as to the attitude of Collins, the name "Collins" was erased, and the name "Donegan" inserted. We have caused the original authorization to appear to be sent to the clerk of this court, and by an inspection of it the Court will see that where the name "Donegan" now appears the name of "Collins" originally appeared. Further, it being an admitted fact that Collins was a solicitor of Dublin and Donegan a solicitor of Cork, the authorization shows upon its face that, as originally drawn, it was for a Dublin solicitor to appear. The testimony, however, of Marie Carrau (page 311), shows that long before the solicitors for complainants went to Ireland to take testimony under the commission, Mr. Hays and Collins had been in correspondence. We submit, therefore, that so far as any statement of alleged facts appears in the affidavit of Collins, it is a statement

which would be discredited by any court in which Mr. Collins undertook to give testimony. His letters written to Mr. Hays, printed in the record in this case, demonstrate that he is unworthy of belief. The ostensible solicitor for Marie Carran, Mr. Donegan, has placed himself upon record. After counsel for complainants left Ireland, Mr. Donegan forwarded, through the commissioner who took the testimony, a statement in regard to the closing of the commission, and he there charged that the commission had been closed without notice to him, and contrary to an understanding with the solicitor for complainants. He also charged that Mr. Wright, who was acting in behalf of complainants, undertook, in the progress of the taking of depositions, to prompt one of the witnesses. The statement of the United States Consul, who was commissioner to take the testimony, disposes of this claim. "Y47" (571). The statement that the commission was closed without notice to him, is refuted over the hand of Mr. Donegan himself. At page 819, the Court will see the letter of Mr. Donegan, dated Cork, November 28, 1901, in which he states that he will not call any witnesses, and asks counsel for the complainants to notify Mr. Riddle to that effect. At pages 819-820, the Court will see similiar letters from other counsel appearing in the case. At page 769, the Court will find Mr. Donegan objecting to the course pursued by counsel for complainants, because they had not examined E. F. Collins, James Mooney, and ——— McCarthy, yet we have the affidavit of Marie Carran, prepared by Mr. W. F. Hays, after the return of the commission, in which, in order to obtain a new commission to examine those witnesses, and Mrs. Lyons and Cotter, the statement is made that some of the witnesses and their testimony were dis-

covered by Mr. Donegan after the taking of the testimony in Ireland (pages 58-62). It is not surprising, therefore, to find Mr. Donegan writing to Mr. Hays, on the 29th day of March, 1902, and stating, at page 116:

"In the face of what Messrs. Howe and Wright know, it is ridiculous to suggest that his (Mooney's) evidence was not procurable in November. Money was the only bar, and you must not blame me. I gave you ample time, and did my best for you and Marie Carrau's interest. If you wish for further information on this score, apply to Mr. Riddle. The same remark applies to Cotter."

Neither is it surprising that on April 16, 1902, Mr. Collins wrote Mr. Hays (102) as follows:

"Mr. Donegan has written you fully as to the effect of the evidence of Mooney and Cotter and I do not think you should have any difficulty in getting a new commission, save only on the ground that this evidence which is now tendered could have been obtained at the last commission. Whoever was finding the funds at that time is, in my opinion, to blame for this, as, if Mr. Donegan had the funds which you have since sent him at the time the commission was heard in Cork, this evidence could have been put on the record, and made it a very difficult matter for the complainants to succeed."

In the same letter Mr. Collins advises Mr. Hays as follows:

"One thing you ought to make very material use of is the fact that none of the letters written by the deceased to Mrs. Lyons, are put in evidence, and that Mrs. Lyons, who was the only person John Sullivan seems to have spoken of while in Ireland, was not examined."

The trouble with this advice is, that the letters referred to by Mr. Collins had long before been put in evi-

dence by counsel for the complainants, and when offered in evidence Mr. Hays had objected to their being received.

At page 116, Mr. Donegan, under date of March 29, 1902, wrote Mr. Hays:

"I regret beyond measure that you have not sent Mr. Collins his fee. He would have been able to swear a strong affidavit himself, and procure one from Mrs. Lyons, which I am sure would have enabled you to procure the fresh commission."

It appears that Mr. Collins was paid his fee, but his affidavit speaks for itself. The testimony of Mrs. Lyons, which Messrs. Collins and Donegan pretended to think of such importance, was testimony which would have corroborated the case of complainants. She had written a letter to Mr. Blake, a solicitor of Cork. That letter is set forth at page 76 of the record. Not only this, but Mr. Collins had prepared a statement of what Mrs. Lyons would testify to, and had sent that statement to Mr. Wright, as appears by the letter of Mr. Collins, set forth at page 82 of the record. The statement which he prepared is set forth at page 81. By reading that statement, the Court will see that the testimony of Mrs. Lyons would not only have corroborated the case of complainants, but that it showed that the statements of Mr. Collins and of Mr. Donegan as to how the letters which had been written by Sullivan to Mr. Collins and to Mr. and Mrs. Lyons were obtained, was absolutely false. All of the witnesses whom Marie Carrau desired to examine under a second commission were persons whom her solicitor was well acquainted with. Canon Carey had been examined as a witness in her behalf.

Mooney was a clerk in the office of Wynne & Wynne, solicitors, in Cork, who had made a statement to Donegan during the progress of the taking of the depositions as to his information concerning John Sullivan. Cotter was the keeper of the public records in the city of Cork. The names of these persons, and their residences, had been furnished to counsel for Marie Carrau by counsel for the complainants.

It seems to us that it is only necessary to call the attention of the Court to the fact that, although counsel for complainants called thirty or more witnesses, who had lived all of their lives in Cork or its suburbs, one or two of whom had lived for fifty years or more in the house in which they were born, and within a few yards of the place where John Sullivan lived, to establish the relationship of complainants to Sullivan, not one of these witnesses were impeached by counsel for Marie Carrau, nor was any evidence to contradict their testimony brought forward. If complainants are not the persons whom they claim to be, why was not some witness brought forward to show who they are? In an old community, where people frequently live all their lives and die in the same houses in which they were born, it would be a very easy matter to expose a false claim of identity. In the whole city of Cork not one witness was, or could be, found to cast doubt upon the testimony of complainants and the witnesses in their behalf who had known them forty years ago; witnesses, some of whom had gone to school with John Sullivan and his sisters. The testimony in behalf of complainants stands uncontradicted; and why? Because it is true; because counsel in Ireland knew it to be

true and could find no one to dispute it. In the face of this evidence it is idle to ask this Court to hesitate. No other conclusion can be reached than that complainants are the first cousins, heirs at law and next of kin of John Sullivan, and as such entitled to his estate. Marie Carrau has sworn that she cannot rebut the evidence given by complainants except by the witnesses named in her application for a commission (page 62); she has sworn "that they are the only individuals who are acquainted with the facts," and "that she cannot prove these facts by any other person or persons than those mentioned in said application" (page 88). The affidavits of the witnesses named by her, except that of her solicitor, Mr. Donegan, are before the Court. The letter of Mr. Donegan is before the Court. Defendant has confessed that the relationship of complainants has been established because she has sworn that she cannot rebut the evidence given by complainants, save by the testimony of parties whose statements corroborate those of complainants and their witnesses.

IX.

THE PRETENDED WILL NEVER WAS MADE BY SULLIVAN. IT WAS THE RESULT OF A CONSPIRACY ENTERED INTO BY MARIE CARRAU, HER SISTERS AND BROTHER-IN-LAW DAUSSAT.

The alleged motive for the making of the pretended will is that Sullivan and Marie Carrau were engaged to be married (37).

THE FORMING OF THE ACQUAINTANCE BETWEEN SULLIVAN AND MARIE CARRAU.

Sullivan, in the summer of 1900, visited Europe and spent some time in Paris. His lack of knowledge of French embarrassed him. He returned to Seattle with the intention of again visiting Paris in September or October, 1900. In order to learn French he went to the house of Daussat in Seattle. Sixty days before his death he and Marie Carrau had never seen each other. It was on July 31, 1900, that they first met (264-279). He then saw for the first time Marie Carrau, her sister Hermance Carrau and Augustine Daussat (279). An agreement between Sullivan and the three women was made that, for tuition, an unfurnished room and two meals a day he should pay five dollars per day. August 4, 1900, he paid $35 in advance for one week's board, lodging and tuition. Exhibit "Y18" (528). He first occupied his room in the Daussat house on the 5th of August, 1900 (285).

THE PRETENDED ENGAGEMENT.

Sullivan was a bachelor, sixty years of age, worth several hundred thousand dollars. Daussat was a restaurant keeper, managing a restaurant in Seattle. His family consisted of his wife, Augustine Daussat, and his sisters-in-law, Marie Carrau and Hermance Carrau. The family rented rooms in their house to lodgers. Marie Carrau gave lessons in French. Marie Carrau testified that Sullivan told her that he went to the house of Daussat

to learn French by marrying a French lady (266, 313). She claims that on September 1, 1900, Sullivan asked her to marry him (287). She said that he told her:

"He had no one on earth, hardly any friends, what he could call, and he had no relatives of any kind, and he would leave everything to me, everything that he possessed would be mine, and he expressed himself very strongly." (287.)

The testimony of Marie Carrau as to the conversations with Sullivan was objected to by counsel for complainants, on the ground that it was inadmissible under the statute, being a transaction with the decedent.

It was important for Marie Carrau to provide an ear witness to the proposition of marriage. Hermance Carrau, her sister, therefore testified that on the 1st of September, 1900, she was in the dining room setting the table for dinner and Sullivan and Marie Carrau were in the parlor. All that she heard Sullivan say to Marie Carrau was:

"I have no relative, no one to leave it to, and all I possess will be yours." (441.)

By reference to Exhibit "Y18" (528), it will be seen that on this very day when Sullivan is alleged to have proposed marriage and which proposition Marie Carrau took under consideration for a week, Sullivan paid $35 in advance for a week's board, lodging and tuition, and was careful enough to write out a receipt and require Daussat to sign it. The proposition of marriage not having been accepted by Marie Carrau on September 1, 1900, and her

testimony being probably incompetent to prove its acceptance, it was necessary to provide an ear witness to the making of the engagement. Mrs. Eames lived next door to Marie Carrau. She was a close personal friend (260). She had a key to the front door of the Daussat house and made use of the telephone in the Daussatt house (241). The alleged acceptance of Sullivan's proposition of marriage Marie Carrau claims took place on September 8, 1900. Mrs. Eames went into the Daussat house to use the telephone. She took down the receiver but was unable to get Central. She hung up the 'phone and stood in the front door, and while there heard Sulivan say to Marie Carrau:

"As you know, I have no relatives and no friends, and I am possessed of a good deal of means, property, money, and if you consent to become my wife I will absolutely convey to you everything I possess in this world. I love you dearly and feel I cannot live without you." (243.)

She also heard Marie Carrau say that she had considered the matter and had decided to become his wife (243). Mrs. Eames then passed out of the house by way of the back door, and while doing so saw Marie Carrau and Sullivan sitting in the parlor on the lounge. This telephone was near the front door (247). Sullivan and Marie Carrau were in the parlor. The parlor had a door opening into the hall. The door was partly open. Mrs. Eames could see them (248). She took down the 'phone, Central said, "Line is busy." She hung up the 'phone, waited, and again took down the 'phone, and she remained there about ten minutes (249). According to her testimony while she could distinctly hear the alleged proposition of marriage made by Sullivan to Marie Carrau and the

acceptance by Marie Carrau, and while the door between the parlor and the hall where the telephone was, was partly open, and though they were sitting within a few feet of where the telephone was, and the telephone was a ten-party line, and she twice undertook to make use of the 'phone, neither Sullivan nor Marie Carrau were aware of her presence (249). Mrs. Eames never mentioned the matter to any one—not even her husband—until after the matter got into the newspapers, when she told her husband that she had heard the proposition of marriage, but she did not tell him the language of the proposition nor of the acceptance (252). It was not until two weeks prior to giving her testimony and nearly eighteen months after Sullivan's death that she, for the first time, told the language of the proposition of marriage and of the acceptance, and she then told it to one of the counsel for Marie Carrau (252). By reference again to Exhibit "Y18" (528) it will be found that Sullivan, on this 8th day of September, 1900, when Marie Carrau accepted him and he promised her everything, was a careful enough business man to write out a receipt for his weekly payment of $35 for board, lodging and tuition and to require it to be signed (156). It would naturally be supposed if the story of Marie Carrau were true that, she was to become Sullivan's wife, and was to become possessed of his hundreds of thousands of dollars, and the wedding had been set for October 1, 1900, the weekly payment of $35 in advance for board, lodging and tuition would have been dispensed with. It would, at least, be supposed that the charge for tuition by the woman so soon to become Sullivan's wife and the possesor of his fortune would not have been insisted upon. It would also be supposed that Sullivan would not have

thought it necessary to insist upon writing out his weekly receipt for board, lodging and tuition and requiring it to be signed. If, on the other hand, he was so careful a business man as to think it important that he should have a receipt for the services of his future wife and her family, and he was not being charged by her for tuition since the engagement, it would not be supposed that he would have allowed Daussat to charge for an unfurnished room and two meals a day, the sum of $5 per day. Yet, by referring to Exhibit "Y18" (528), it will be found that on September 15, 1900, he again paid his weekly amount and required his weekly receipt. Neither would it be supposed that if the relations which are sworn to have existed between Sullivan and Marie Carrau, by her and her sisters and brother-in-law, did exist, she would, on the 5th day of October, 1900, as a creditor of the deceased, have prayed for the appointment of an administrator of his estate and sought thereby to collect the small amount which Sullivan owed from September 22, 1900, until his death. Exhibit "Y25" (531, 279, 280).

It is to be remembered that this wealthy man, who, according to Mrs. Eames, declared to Marie Carrau that he could not live without her, and promised if she would become his wife she would have all he possessed, neither gave her an engagement ring nor one single gift (286). Although he was not taken ill until September 15, 1900, and the wedding was to take place, according to her story, on the 1st of October, 1900, she had made no preparations for it (291). Prior to Sullivan's death she had never told any one outside of the household of the intended marriage (317). Instead of the intimate friends of the part-

ies being called to testify to their knowledge of the engagement obtained in the usual way, it was necessary to prove the engagement by ear witnesses overhearing the proposition of marriage, and each of these witnesses testified that on these occasions Sullivan stated that he had no relatives.

Sullivan, who was in the habit of writing to Mrs. Lyons about his movements and plans (526), did write to her on September 12, 1900, four days after the day Marie Carrau claims she accepted his proposition of marriage and four days after the day when she says that she and Sullivan had agreed upon October 1, 1900, as the day when the marriage should take place.

In this letter there is no mention of an engagement, no mention of the date of an intended marriage. On the contrary, he says:

"*I* am going to leave for Paris the *last of this month. I* will spend the winter there. When the weather gets cold in Paris *I* will go down to Monte Carlo." (527.)

The correspondence between Sullivan and Mrs. Lyons which is in evidence makes it plain that if Sullivan was about to be married he most certainly would have stated that fact to Mrs. Lyons.

When these things are borne in mind, the conclusion cannot be escaped that between John Sullivan and Marie Carrau there was no engagement of marriage; there were no relations between them other than those of teacher and pupil, boarder and boarding house keeper.

THE WORDS CLAIMED TO CONSTITUTE THE PRETENTED WILL WERE NEVER SPOKEN BY JOHN SULLIVAN.

It is claimed by Marie Carrau that at eleven o'clock at night, September 25, 1900, Sullivan, who was sitting in his arm chair in his room, told her to call her sisters and brother-in-law. She did so. They went into Sullivan's room. Daussat said, "What is the matter?"

Sullivan said, "I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick, very sick, and I do not know what might happen."

Daussat said, "Thank you."

All except Marie Carrau left the room at once. Marie Carrau remained about five minutes. She could not speak. Sullivan did not speak any more. He seemed very much exhausted. Marie Carrau went down stairs to get him some milk, and when she returned Sullivan was in bed and asleep (270). This is the account given by Marie Carrau of the scene of the making of the alleged will. Sullivan did not die until the next morning.

After leaving Sullivan's room Marie Carrau, according to her story, went to a desk in the sitting room and with a pencil wrote down the words that she claims Sullivan said, and then returned to his room.

She was asked on cross examination the following questions:

"Q. Now, Mr. Sullivan after saying these words that you say he said, had plenty of time before he died to have signed that writing, did he not?

Mr. HAYES: I object as incompetent, irrelevant and immaterial, and asking for an opinion.

A. I do not think that he was able to, because he never spoke to me since.

Q. Never spoke to you afterwards?

A. No, he was drowsy or sleepy.

Q. He was drowsy and sleepy?

A. Yes sir.

Q. As soon as he said these words?

A. Well, I told him that I would go and—

Q. Did he go to sleep as soon as he said these words?

A. When I came back he had retired, he was asleep.

Q. Was he breathing hard?

A. Yes, he was breathing very hard." (296.)

Marie Carran was a Roman Catholic. Sullivan was a Roman Catholic. He held a pew in the Church of Our Lady of Good Help, of which Father Prefontaine was the priest. A telephone was in the house. No priest was called for. A doctor lived next door. Neither he nor any other physician was called for. The man, who, according to Marie Carran's story and that of her sisters and brother-in-law, had summoned the household around him at eleven o'clock at night, had told them,

"I am sick, very sick, and know not what might happen," was left for the remainder of the night without any one in his room.

In spite of the foregoing facts, the sworn answer filed by Marie Carran in the proceedings in the State Court, alleged:

"That at said date and up to within a very few moments of the death of said John Sullivan he had possessed

all of his reasoning faculties and was then and there of the age of sixty-three years and of sound and disposing mind and fully competent to make and publish such a will, and upon his own motion and without suggestions from any one and because he loved this answering respondent and because of the relationship existing between this respondent and said Sullivan, and because within a brief time they were to be married, the said Sullivan did then and there make said will, devising all of his property, both real and personal, to this respondent, and did then and there bid three persons who were persons other than respondent to bear witness that such was his will." Exhibit "Y34" (550).

The next morning Marie Carrau went into Sullivan's room, handed him the newspaper, and placed his eyeglasses on for him. She left the room to get his breakfast. When she returned he was dying or dead. (296, 298).

Mrs. Eames was called by Hermance Carrau and she went into Sullivan's room. This was after nine o'clock on the morning of September 26, 1900. Mrs. Eames testified that within a half hour after Sullivan's death, Marie Carrau being distressed, she, Mrs. Eames, endeavored to console her, and Marie Carrau replied:

"You cannot understand what it meant for me. It was everything to me. We were to be married *and he was to have left me everything. Everything was to be mine.*" (256).

On the day of Sullivan's death, the 26th of September, 1900, after Mrs. Eames had talked with Marie Carrau, and after Sullivan's body had been removed from the house by Mr. Littell and Dr. Carman, Marie Carrau claims to have made a copy of the alleged penciled will and to

have had it signed by Hermance Carrau, Augustine Daussat and Louis Daussat (304, 305).

The manner in which the record in this case was compiled would make it appear that Daussat testified prior to the date on which Marie Carrau and her sisters testified, but by reference to the Master's Report (519), it will be seen that these witnesses testified in the following order: Marie Carrau, Hermance Carrau, Augustine Daussat and Louis Daussat, and not in the order in which they appear in the depositions to have testified. It is important that this fact be borne in mind.

On her cross-examination, on being asked why she wrote down the words which she claimed Sullivan spoke, Marie Carrau said she did not know, she could not give any reason for her action, unless it was that she wanted to please him (301). Upon being asked whether she thought the words were of any special importance, she replied she did not know, and upon being cross-examined testified as follows:

"Q. What did you think these words were?

A. I thought it was the expression of a written will he had made, a written will.

Q. You thought he had made a written will?

A. Yes sir, because he had told me that they did not respect the law and he wanted to know what he meant.

Q. And you thought that Sullivan had made a will just like these words, was that it?

A. Yes sir.

Q. Was that the reason you had them put in writing, so that you could remember it?

A. No, that was not the reason at all.

Q. Now, did you understand that the words that Mr. Sullivan had said when your brother and sisters came in there, that he was trying to explain to you that he had made a written will with those words in it?

A. Yes sir." (301, 302).

On being cross-examined for her reason in copying the alleged penciled will and having her brother-in-law Daussat and her sisters sign it, she testified as folows:

"Q. What made you think of making this copy afterwards? What did you want to do with the copy?

A. I don't know. I could not tell what I wanted to do.

Q. Mr. Sullivan was dead at that time, was he not?

A. Yes sir.

Q. You did not want to show that to him, then?

A. No, but I wanted—what I wanted to do?

Q. What was your object?

A. *I had no object.*

Q. You had no object at all?

A. *No.*" (313, 314.)

Hermance Carrau, upon her cross-examination, testified, concerning her understanding of what Sullivan meant by the words he is alleged to have spoken when he had the Daussats and Carraus called into his room, as follows:

"Q. Now, did you understand that by these words Mr. Sullivan was telling you that he had made a written will?

A. Yes sir.

Q. *And he was explaining what was in this written will?*

A. *So we supposed.*

Q. *You did not understand that he was making a will?*

A. *We thought that it was written.*

Q. *You thought he was telling you what was in that written will, is that so?*

A. *Yes sir.*" (446).

Augustine Daussat, on cross-examination, testified, in reference to the alleged nuncupative will, as follows:

"Q. Did you understand that Mr. Sullivan when he spoke these words wanted you to understand that he had made a will, a written will, with these words in it?

A. Yes, of course, I guess so.

Q. That is what you understood?

A. Yes, I guess so.

Q. No (now) guess, but is that what you understood?

A. Yes.

Q. And he was telling you what his will contained?

A. Yes sir, we thought that the will was made.

Q. And you were surprised when the written will was not found?

A. Yes sir.

Q. *You did not understand at that time that he was making his will, did you?*

A. *No, we thought always that there was a written will.*

Q. *You thought that the will had been made before that?*

A. *Yes sir.*

Q. *And that he was telling you what was in that will?*

A. *Yes sir.* (471).

After Marie Carrau claims to have made a copy of the alleged penciled will and to have had the alleged ink copy signed by her sisters and Daussat, Father Sweere called at the house. She did not tell Father Sweere that she had written down Sullivan's words.

On cross-examination, Father Sweere said:

"She told me that when Mr. Sullivan got an attack that night of heart trouble that he called them all together and before them stated that Marie was his heir of all he possessed, both personal and real estate.

Q. These were the words that she told you?

A. These are about the words. I do not know exactly. I never expected to be a witness in this case.

Q. Just answer please, "yes" or "no," whether these were the words, as close as you can recollect?

A. I guess it is that way." (227).

Father Sweere further testified on cross-examination that the conversation with Marie Carrau took place the day after he read in the newspaper the account of John Sulivan's death; and being further questioned, he testified:

"Q. And at that time Miss Carrau told you that she thought Sulivan had made a will and that Mr. Littell had been up there and had got all the papers?

A. And cleaned the room out of everything there was. She did not know what he took.

Q. Now, did she say that the will of John Sullivan she thought was safe in Mr. Littell's hands?

A. I think so.

Q. Did she at that time that she mentioned the so-called verbal will tell you whether that will had been written out or not?

A. She did not say, no. She said she thought it was; she did not say it was.

Q. She did not tell you whether she had written it out or not?

A. No.

Q. So that the will that she meant was safe in Mr. Littell's hands was the previous will?

A. She did not tell me that, no. She simply told me she thought there was a will, a written will.

Q. That she thought there was a written will?

A. That is what she thought. She told me at the same time what he had done in the evening, as I testified before. (224, 225).

* * * * *

Q. Now, this will that she said she thought would be safe in Mr. Littell's hands, that was a written will, if he made a written will?

A. She did not say that there was a written will; she simply expressed her idea that she thought there was.

Q. She thought there was a written will?

A. She thought it would be safe in his hands if there was.

Q. She expressed the idea that she believed that there was a written will, did she not?

A. Yes sir, she felt there was, that was all. I don't remember now the words that were used.

Q. But that was the impression?

A. That was the impression conveyed to me, that she thought there was a written will.

Q. If there was a written will it was safe in Mr. Littell's hands?

A. Well, I suppose that is what she meant to say, but I do not remember." (229, 230).

It appears from this testimony beyond dispute that neither Marie Carrau, Hermance Carrau, nor Augustine Daussat understood that the words alleged by them to have been spoken at eleven o'clock at night on the 25th day of September, 1900, by Sullivan, constituted his will. They did not understand that they were witnessing a will, nor did they understand that Sullivan was making a will. Their own testimony, therefore, destroyed their claim that Sullivan had made a nuncupative will.

"The alleged nuncupative will must have disclosed a present consistent intention that the very words uttered should constitute one's will and that the witnesses should

understand the dying person in that sense and mark his words accordingly."

Schouler on Wills, p. 381.

"The testamentary capacity of the deceased and the *animus testandi* at the time of the alleged nuncupation must appear in the case of a nuncupative will by the clearest and most indisputable testimony."

1 Wms. Exrs. 121, 122.

"It is essential to the establishment of a nuncupative will that it shall, among other things, clearly appear (a) that at the time of uttering the words relied upon, the testator had a present, consistent intention that the very words uttered should constitute his will and that the witnesses so understood his language."

Syllabus 1 by the Court, in re Male's Will, 49 N. J. Eq., 266.

Hatcher v. Millard, 42 Tenn. 30.

Dorsey v. Sheppard, 12 Gill & J. 77.

The testimony of Marie Carrau, Hermance Carrau and Augustine Daussat was given on the 6th of March, 1902. No testimony was taken upon the 7th of March. On the 8th day of March, Daussat testified. It is evident that at that time Marie Carrau and her sisters understood that the testimony which they had given that they did not understand that the language which they claimed Sullivan had used constituted his will, but that they understood that Sullivan had theretofore made a written will and when he spoke the alleged words was telling them what that written will contained, was fatal to their case. Daussat was to do away with this testimony. When he went upon the witness-stand, counsel for Marie Carrau promptly

undertook to have him repair the breach which Marie Carrau and her sisters had made in her case, and he testified, on direct examination, as follows:

"Q. Now, at the time you were present and heard Mr. Sullivan state those words, what did you understand him to mean—what was your understanding at the time of what he meant?

A. Well, I understood that is the will of what he gives to my sister Marie. I understand that is the will.

Q. That that was a will of all his property to your sister Marie?

A. Yes sir, that is what I say." (350).

He also testified concerning the written copy which he signed, as follows:

"Q. Why did you sign that paper?

A. Because I am sure and believing that is the real will—that is the will he made for my sister—that is the will, the real will.

Q. That was the real will?

A. The real will.

Q. Did you at any time learn differently or learn that that was not the real will or a good will? If so, when?

A. Well, some days after.

Q. How many days?

A. Well, I learn, I think, it is four days after, three or four days, that is, on Saturday.

Q. On Saturday?

A. Yes.

Q. That that was not a good will?

A. No, that is no good will." (351).

On cross-examination, he testified:

"Q. When you put your name to this paper, did you think you were putting your name to the will of Sullivan?

A. Yes sir, I think that this was the real will, that he made it.

Q. You think that was the real will?

A. Yes sir.

Q. And when you put your name there to it, you thought you were putting your name to what was the real will of John Sullivan?

A. Yes sir.

Q. In order that that might be probated?

A. Yes sir." (371).

It will be remembered that this paper which Daussat swears he signed his name to as the will of John Sullivan is sworn by Daussat, Marie Carrau, Hermance Carrau and Augustine Daussat to have been written the day Sullivan died, after Mrs. Eames had been at the house and before Father Sweere arrived.

Daussat, however, has been impeached as unworthy of belief, and the witness impeaching him was Father Prefontaine, the pioneer priest of Seattle, the priest of the parish of Our Lady of Good Help, the priest of the church in which John Sullivan held a pew, and to which John Sullivan at times contributed assistance.

John Sullivan was buried on September 28, 1900 (274). Father Prefontaine conducted the funeral service. Returning from the cemetery, while on the train, Father Prefontaine sat alongside of the Daussats and near Marie Carrau.

On cross-examination impeaching questions were put to Daussat, and he was interrogated as follows:

"Q. Did you, coming back from the funeral, on the train, have any conversation with Father Prefontaine?

A. Well, we got some talks, yes.

Q. Did Father Prefontaine ask you whether you thought Mr. Sullivan had left a will?

A. No sir.

Q. You swear to that?

A. Yes sir." (391).

* * * * *

"Q. Did you not tell Father Prefontaine you thought there was a will?

A. We did not talk no will at all. We talked some about different places from Paris and so on, because that was no place to talk when a man was just buried in the ground.

Q. Did you not in that conversation coming back on the train from John Sullivan's funeral, say to Father Prefontaine that you thought there was a will and that John Sullivan had said Father Prefontaine would not be forgotten, or words to that effect?

A. You tell me that again, will you, Mr. Howe?

Q. Yes. Now, listen. Did you not say to Father Prefontaine on the train coming back from John Sullivan's funeral—

A. Yes.

Q. —that you thought that John Sullivan had left a will, because you had heard Mr. Sullivan say that Father Prefontaine would not be forgotten?

A. No sir.

Q. Did you not make substantially that statement to Father Prefontaine on that occasion?

A. No sir.

Q. Do you want to be understood as swearing that you had no conversation with Father Prefontaine on the subject of Sullivan's will?

A. Yes sir.

Q. And you are as positive of that fact—

A. Yes sir.

Q. —as of any fact you have testified to here to-day?

A. Yes sir." (392).

Father Prefontaine, a priest of the Roman Catholic Church, who has resided in Seattle since 1867, testified that he was the priest of the Church of Our Lady of Good Help. John Sullivan was one of his parishioners. He held the funeral services over John Sullivan. John Sullivan was buried in Calvary Cemetary. Father Prefontaine came back from the funeral on the train which brought Marie Carrau, her sisters and Daussat. He sat in their immediate vicinity and entered into conversation with Daussat in regard to Sullivan. He then testified as follows:

"Q. Did you and Mr. Daussat have any conversation in regard to Mr. Sullivan?

A. Yes sir.

Q. What was that?

A. Well, I asked Mr. Daussat if he thought that Mr. Sullivan had left a will, and he said, yes, I think he has. And he says, 'I think he must have left something for you, because he often said that he would not forget Father Prefontaine.'

Q. That was on the train coming back from John Sullivan's funeral?

A. Yes, that was on the train coming back from John Sullivan's funeral." (482).

On cross-examination by counsel for Marie Carrau, Father Prefontaine testified as follows:

"Q. Do you know, Father Prefontaine, whether or not Mr. Sullivan did remember you in his will?

A. I do not know anything about it.

Q. You have not been advised of any remembrance?

A. No.

Q. Were you expecting any recognition?

A. Well, I said to myself, if there is a will, Mr. Sullivan will certainly do something for the Church—not for me individually, but for the Church.

Q. For the Church. And when you learned that he did not do anything for the Church, you were disappointed naturally?

A. Well, when I heard that he had not left a will, of course I was not disappointed, because then I came to the conclusion that Mr. Sullivan had died suddenly and did not make a will." (482, 483).

It is clear, therefore, that the story that the alleged will of Sullivan had been reduced to writing and had been signed by Marie Carrau, her sisters and brother-in-law on the day Sullivan died was not true. The conversation between Father Prefontaine and Daussat took place two days after Sullivan's death. At that time, when asked by Father Prefontaine if he thought Sullivan had left a will, Daussat replied that he thought he had, and said,

"I think he must have left something for you, because he often said that he would not forget Father Prefontaine."

Yet, in his testimony Daussat claims that when he put his name to the paper which he claims was the written evidence of Sullivan's will he thought that paper was the real will of Sullivan and that he put his name there for that purpose and in order to have it probated, and that will left everything to Marie Carrau. If he had done as he testified, why did he tell Father Prefontaine that he thought Sulivan had left a will and left something for him?

Counsel for Marie Carrau, realizing that the testimony of Father Prefontaine would require the Judge of the District Court of the United States for the District of Washington, who had known Father Prefontaine for more than thirty years and who was himself a pioneer, to hold

Daussat unworthy of belief, recalled Daussat and endeavored to make a loophole by which he might escape.

On March 22d, Daussat was again placed upon the witness-stand by counsel for Marie Carrau, and he testified that he did talk with Father Prefontaine on the train returning from John Sullivan's funeral and that the conversation did relate to John Sullivan's will, and that Father Prefontaine asked him whether he believed Sullivan made any will, and Daussat replied "Yes"; that Father Prefontaine then said he was sorry he did not go to see Sullivan when he was sick, to which Daussat replied,

"Perhaps if you done so Mr. Sullivan would have remembered you and would have remembered you in the will."

Daussat further testified that at the time of his conversation with Father Prefontaine he had not been told that an oral will was not good, but that he at that time believed that an oral will was good (419).

Marie Carrau was recalled to change her testimony in regard to the will, and she testified that she thought at the time Sullivan was speaking the words which she claimed constituted his will that he was then making his will; that when she wrote the words down in ink she thought they were Sullivan's will; that when she got her sisters and brother-in-law to sign the instrument she did so because she thought it was Sullivan's will and she had them sign it for that purpose; and that she had that object in her mind at that time. (341, 342, 343).

She further testified that it was after Father Sweere told her that an oral will was not good that she came to the conclusion that Sullivan had made a written will (343). She had forgotten that Father Sweere had testified that he had not told her that an oral will was not good until three or four or possibly eight days after Sullivan's death (229); that she had testified that Father Sweere had not told her that an oral will was not good until Saturday, and her first interview with Father Sweere after Sullivan's death was on Thursday (273, 274); that Father Sweere had also testified that on the first occasion of his seeing Marie Carrau, which was the day after Sullivan's death, Marie Carrau had stated to him that Mr. Sullivan had called them sometime in the evening between ten and eleven o'clock and stated that he left all his real and personal estate to Marie, and then testified:

"Q. What did you do then?

A. I then asked her whether he had made a will to that effect and she said she thought yes. I says, 'Where is the will deposited?'

Q. What else did she say about his room?

A. She further said that Mr. Littell had been there early in the morning and had taken away everything out of the room and she thought it was taken into the hands of Mr. Littell." (219, 220).

It appears from the testimony that if Father Sweere was correct in the date when he said that he had the conversation with Marie Carrau, then at that time the alleged will had not been reduced to writing by Marie Carrau and signed by her brother-in-law and sisters, and that at that time she did not think she had in her possession the will of Sullivan, or she would not have said to Father Sweere,

in answer to his question, "Where is the will deposited?" that she thought there was one and that it was in the hands of Mr. Littell.

Hermance Carrau was recalled to change her testimony in reference to the will, and she swore that she believed at the time that Sullivan is alleged to have spoken the words that he was making his will; that she never thought there was a written will until Father Sweere had told them that an oral will was not good; that at the time she signed the copy of the alleged will on the morning of Sullivan's death she believed she was signing his will, she meant to witness it as his will; that since giving her testimony on the first occasion she had not talked the matter over with any one and that no one had suggested to her that she should make any change in her testimony. (460, 461, 462, 463).

Augustine Daussat was also recalled to change her testimony in regard to the will. She testified that when Sullivan spoke the words she thought they were his will; that they were the real will; that she did not understand anything about any other will; that the first time she thought Sullivan had left a written will was after Father Sweere said that an oral will was not good; that up to that time she thought that what Sullivan had said was a good will; that when she signed the written paper the day Sullivan died she thought she was signing his will; that that was the reason she signed it; and that Marie Carrau had put it in writing because it was his will; that she had not talked the matter over with any one, had never said to any one a word about it; that no one had

said anything to her about changing her testimony since she first gave it. (477-481).

Not a single important witness was called in behalf of Marie Carrau, who, after giving his or her testimony originally, was not recalled to change such testimony upon vital points.

Mrs. Eames, who had testified in her original testimony, that Marie Carrau had stated to her immediately after Sullivan's death that Sullivan *was* "to leave her everything," changed her testimony so as to make it read that Marie Carrau had said Sullivan was to "give" her everything (264).

Marie Carrau was recalled so as to make her testimony read that Sullivan had promised to "give" her everything, instead of "leave" her everything (334).

Mrs. Seckler, in her original testimony, had testified that Sullivan had gone to the Daussat house to make it temporarily his home. She was recalled for the purpose of changing her testimony so as to strike out the word "temporarily," and counsel for Marie Carrau endeavored to get her to say that Sullivan had used the word "permanently." (433). The object of this change is very evident. It was an effort to remove any doubt of the Daussat house being the residence of Sullivan, within the meaning of the statute relating to nuncupative wills.

It is unnecessary to point out further instances of the willingness of the Daussats and Carraus to testify to

anything which they believed would bolster up the claim of Marie Carrau.

One important matter, however, must be called to the attention of the Court, and that is that I. D. McCutcheon, Esq., a lawyer practicing in Seattle, had for four years been the attorney of Louis Daussat. On October 5, 1900, Marie Carrau and Louis Daussat went to Mr. McCutcheon's office, signed a petition for letters of administration upon the estate of John Sullivan, deceased, requested the appointment of I. D. McCutcheon as administrator, and in the petition stated that Sullivan had died intestate and that they were his creditors. Realizing that this written evidence conclusively established the falsity of the claim that they believed that Sullivan had left a will, Daussat and Marie Carrau took the position that before going to Mr. McCutcheon they had been advised that an oral will was not valid and they had no objection, therefore, to signing the petition for letters of administration; that they did not mention to Mr. McCutcheon anything concerning the alleged will because they had been advised that it was invalid. Mr. McCutcheon had been the advisor of Daussat for years. They testified as to the conversation which took place between themselves and Mr. McCutcheon. Having thrown down the bars Mr. McCutcheon was called as a witness for complainants and his testimony shows that Marie Carrau and Daussat signed the petition for letters of administration, fully understanding that they were alleging that Sullivan had died intestate, that they were his creditors, and that in the course of a few days Daussat returned to Mr. McCutcheon's office and demanded the return of the petition which Mr. McCutcheon informed him

could not be complied with because it had been filed. Daussat then informed Mr. McCutcheon that Mr. Hays had been employed by Marie Carrau (487-489). If the claim of Marie Carrau, her sisters and Daussat were true, that until they were advised by Father Sweere that an oral will was not valid, they believed that Sullivan had left a valid oral will, then they would not have signed the petition for letters of administration stating that Sullivan died intestate and they were his creditors. If, at the time of the signing of the petition for letters of administration, they had been advised that an oral will was invalid, then if they believed that Sullivan had left a written will they would not have signed the petition for letters of administration stating that Sullivan died intestate and they were his creditors. The fact of the matter is, that at the time the petition for letters of administration were signed the idea of an oral will had never been thought of. Father Sweere's memory was at fault. He never discussed it with Marie Carrau until after the petition had been signed. If the Court reads his testimony, it will be seen that his recollection is very uncertain upon important points. The fact that Mr. McCutcheon had been attorney for Daussat for years, and that Marie Carrau and Daussat both went to him on October 5th, 1900, and had him prepare the petition for letters of administration alleging that Sullivan died intestate and indebted to them, and that no mention of an oral will was made, is proof that at that time the idea of an oral will had never suggested itself to them. In a few days after signing the petition, however, Daussat demanded the return of the petition. It was then that the oral will was originated.

THE STORY OF THE MAKING OF THE ALLEGED NUNCUPATIVE WILL, AT 11 O'CLOCK AT NIGHT ON THE 25th OF SEPTEMBER, 1900, IS INHERENTLY INCREDIBLE.

History repeats itself. More than three hundred years ago, a young woman claimed an estate under an alleged nuncupative will said to have been made by an old man while *in extremis*, before nine witnesses. The perjury and subornation of perjury in the case gave birth to those sections of the Statute of Frauds of 29 Charles II., Chapter 3, which restrict the making of nuncupative wills.

Cole v. Mordaunt, 4 Veazy, 196, note.

Lord Chancellor Nottingham, who tried that case, bore a conspicious part in procuring the passage of the statute.

"But even these legislative precautions were insufficient to prevent the grossest frauds and perjury in the introduction of nuncupative wills."

Kent's Commentaries, 13th ed., Vol. 4, p. 517.

Schouler on Wills, Sec. 377.

The Territory of Washington, by the Act of 1854, threw around the heirs and next of kin of the deceased, John Sullivan, safeguards in addition to those established by the efforts of Lord Chancellor Nottingham, but even these have not been sufficient to enable them to avoid four years of bitter and expensive litigation to clear their title to their inheritance from the claim of an alleged beneficiary under a pretended nuncupative will, manufactured after the death of the deceased, probated by a decree based

on false testimony, rendered *ex parte*, and without jurisdiction.

The language of the Chancellor in the case of

Prince v. Hazelton, 20 Johnson's Reports, 501,

in holding void an alleged nuncupative will, is exceedingly pertinent to the case at bar. At page 509, he says:

"This will as certified by the four witnesses, is in these words: 'I now say, as I have repeatedly said before, that I leave all the property I am possessed of to Mary Hazelton. I do this in consequence of the good treatment and kind attentions I have received from her during my sickness. She is worthy of it. No other person shall inherit my property. I wish you all in the room to take notice of this.' This will carries marks of fraud on its very face. Let us examine it attentively. This sweeping donation is made, for what? For good treatment and kind attentions received from her during his sickness. The sickness had lasted only five weeks, and it was not so bad but that he was able occasionally to ride out. No person apprehended any immediate danger. He had a hired nurse, a colored woman, who was by him totally forgotten. What could this other woman have possibly done in the course of five weeks to awaken in any rational mind a sense of such enormous obligation, or to call forth such stupendous remuneration? I am forcibly struck with the folly and falsehood of the motive assigned. But the will goes on and adds 'She is worthy of it.' And where does her great merit appear, and from what circumstance does she entitle herself to this extravagant eulogy? The very declaration that she was worthy to possess all his estate proves that Jones must have been insane, or that the whole is a base fabrication. The will goes on further and says: 'No other person shall inherit my property.' And why these words of special exclusion of the rest of the world? They seem to imply a heartlessness and misanthropy very unnatural and very improbable for any man to express in the contemplation of death, and who is in the enjoy-

ment of the comforts and smiles of fortune, and especially for a native-born Irishman, who was in the midst of his emigrant countrymen and could not but have heard and felt the claims of religion and charity, of the widow and the orphan. He then adds: 'I wish you all to take notice of this'—a speech which looks so much like a contrivance that it does of itself throw a suspicion over the whole piece. This man must have been previously told that the statute required that, in making a nuncupative will, the testator must bid the persons present to bear witness that such was his will. It was made in the middle of the day, when he was quite comfortable and far from the apprehension of death, and in this respect, with all punctilious technical adherence to forms, it had the requisite number of witnesses and the address to the bystanders. Jones must have deliberately determined upon a nuncupative instead of a written will, and previously known and studied all the circumstances that were requisite to make it valid, or else this will has been since got up for him, like a puppet show, by the art and cunning of some juggler behind the scene."

Apply this language to the case at bar. Sullivan, possessed of property worth hundreds of thousands of dollars, disposes of it all. To whom? To the Church? No. He, who in his lifetime, contributed to his Church, upon his death-bed and while in "contemplation, expectation and fear of death," passed his Church by. Did he remember his old friend Mrs. Lyons, who had cared for his insane sister, and to whom he had written:

"I appreciate very much the kind favors that you have extended to her. I hope that I may never forget them." (Exhibit "Y6").

No; in the will the ties of friendship are forgotten, and all of his property is left to a woman whom he had not known sixty days, whose pretended engagement of marriage is evidenced neither by an engagement ring nor a

single gift, and for whose services in teaching him he paid in advance on the day it is claimed he proposed marriage, and required a receipt as evidence of his payment.

Not only this, but Sullivan, a Roman Catholic, surrounded by Roman Catholics, "in actual contemplation, expectation and fear of death," and who it is sought to prove was then already in the shadow of death, neither called for nor was provided with the spiritual aid of him who alone could remit the sins of a life of sixty years.

Yet the court is asked to believe that this man, under these circumstances, dictated a will conforming strictly to all the statutory requirements for its execution.

Will.

"I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick, and we know not what might happen."

Ballinger's Code, Sec. 4605.

"No nuncupatinve will shall be good when the estate bequeathed exceeds the value of two hundred dollars, (nor) unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator, at the time of pronouncing the same, did bid some person to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return. * * *"

Is the language of the alleged will such language as would naturally been used? The alleged testator directs

the witnesses to remember and witness that he wills all his property and personal effects to be the money and property "of your sister, Marie Carrau." The man who had been sick and confined to his room since the 18th of September, concerning whom the physicians had had a consultation, thought it necessary to incorporate in this nuncupative will the statement:

"I am sick and we know not what might happen."

What possible reason could have moved him, at 11 o'clock at night, to suddenly arrive at the conclusion that he was sick? A physician lived next door, but he was not called in. The testator was a parishioner of the parish ministered to by Father Prefontaine. A telephone was in the house, but the priest was not summoned. Sullivan was sitting in his armchair, in his room. He left his armchair and went to bed. He had ample opportunity to make a will if he wished.

Marie Carrau claims that she reduced his language to writing a few minutes after Sullivan spoke. The law of the State allowed one of the witnesses to sign his name to the will for him, if he requested it. He made no such request. In the language of Prince v. Hazelton, *supra*, Sullivan—

"—must have deliberately determined upon a nuncupative instead of a written will, and previously known and studied all the circumstances that were requisite to make it valid, or else this will has been since got up for him, like a puppet show, by the art and cunning of some juggler behind the scene."

Nuncupative wills are everywhere regarded with suspicion. Knowledge of human nature teaches the wisdom of so regarding them. Legislators have written that knowledge of human nature upon the statute books. The courts have uniformly, by reason of their knowledge of human nature, required the strictest adherence to the forms of the statute and the clearest proof of the making of such wills.

Prince v. Hazelton, 20 Johnson 502.
Yarnall's Will, 4 Rawle 46.
Carroll v. Bonham, 42 N. J. Eq. 625.
Boyer v. Frick, 4 Watts & S. 357.
Haus v. Palmer, 21 Pa. St. 296.
Scaife v. Emmons, 84 Ga. 619.
1 *Redf. on Wills*, 185.
Schouler on Wills, Sec. 377.
Mitchell v. Vickers, 20 Tex. 377.
Brunson v. Burnett, 1 Chand. 136.

THE PRETENDED DECREE OF PROBATE WAS OBTAINED BY FRAUD, FOUNDED UPON FALSE TESTIMONY AND RENDERED WITHOUT JURISDICTION.

Sullivan died September 26, 1900. Mr. Littell was appointed special administrator of his estate. Numerous persons petitioned that letters of general administration should issue and a number of persons were nominated for the appointment. On the 19th of November, 1900, Terence O'Brien was appointed general administrator. He qualified and took charge of the estate. Marie Carrau and Daussat had petitioned for the appointment of I. D. McCutcheon. *At half past eleven o'clock a. m. March* 8, 1901,

the petition of Marie Carrau was presented to the Judge of the Superior Court of King County, State of Washington, setting up the alleged nuncupative will and praying its probate. The statute of the State of Washington, *supra*, prohibited the Superior Court from hearing any proof of a nuncupative will until a citation should be issued citing the widow or next of kin of the deceased that they might contest the will. On the presentation of the petition for the probate of the alleged will, the Judge of the Superior Court, *at half past eleven o'clock on the morning of March* 8, 1901, ordered a citation to issue directed to the widow and next of kin, requiring them to appear at *ten o'clock on the morning of the same day, a time then already passed,* to show cause why the nuncupative will should not be admitted to probate. One of the counsel for the petitioner for the probate of the alleged will took the citation, which was issued under the order, into the office of the Sheriff, and the Sheriff without leaving his office, returned that he was unable to find any widow or next of kin in King County. The testimony of the witnesses in support of the will had been previously typewritten. The certificate of probate and the decree of probate had been previously typewritten, and about half past eleven o'clock on the morning of March 8, 1901, the Judge of the Superior Court examined Marie Carrau, her sisters and Daussat, signed the certificate of probate and entered a decree probating the will. The entire proceedings were *ex parte*. The complainants in this suit were residents of Ireland. The statute gave them a right to be present at the probating of the alleged will to contest it. The citation issued at half past eleven o'clock a. m. of March 8, 1901, returnable at ten o'clock on the morning of the same day, did not afford them

either notice or an opportunity to be heard. The general administrator of the estate was in the City of Seattle in the discharge of the duties of his office. He had no knowledge of the proceedings to probate the will, nor was any notice given to him or to any one else. At that time there were on file in the office of the Clerk of the Superior Court of the State of Washington for King County, claims of certain persons, other than complainants, as heirs of John Sullivan, deceased. No notice was given to the attorneys for such persons, although the attorneys were residing in Seattle. The fact of the existence of such claims was not brought to the attention of the Judge. Those claims have not been prosecuted.

On March 26, 1901, Marie Carrau filed her petition for the revocation of O'Brien's letters of administration (557).

After March 26, 1901, and *prior to March* 30, 1901, one of Marie Carrau's counsel, who had assisted in the probate of the alleged will, became the attorney for the administrator (187).

On March 30, 1901, the petition for revocation of O'Brien's letters of administration was withdrawn without prejudice. Exhibit "Y41" (559).

On May 21, 1901, Marie Carrau filed her petition in the Superior Court for King County and prayed for the distribution of the entire estate to her as owner thereof under the nuncupative will, one of her attorneys being also attorney for the administrator. Exhibit "Y40" (555).

On the 20th of June, 1901, these petitioners filed their

bill in equity in the Circuit Court of the United States for the District of Washington (11,12), wherein they alleged substantially the facts hereinbefore set forth, and prayed that Marie Carrau be enjoined from asserting any title under the alleged nuncupative will, that it was probated without jurisdiction, that a nuncupative will was invalid where the estate bequeathed exceeded two hundred dollars, and that even if valid it could not convey real estate; that complainants were about to be deprived of their property without due process of law, in violation of their rights and of the Fourteenth Amendment to the Constitution of the United States.

The alleged decree of probate having been founded upon a citation issued at half past eleven o'clock on the morning of the 8th day of March, 1901, returnable at ten o'clock on the morning of the same day, the complainants being residents of Ireland and being required to appear in the State of Washington to contest the alleged nuncupative will, and the decree of the court being founded entirely on the testimony of Marie Carrau, her sisters and her brother-in-law, Daussat, and it having been found by the Circuit Court of the United States, for the District of Washington, that the testimony upon which the decree was founded was false and was given *ex parte*, the decree of probate was rendered not only without jurisdiction but was obtained by fraud, and a Circuit Court of the United States was therefore vested with full jurisdiction to enjoin Marie Carrau from availing herself of a judgment so obtained by which she was endeavoring to take the entire estate from the hands of the trustee and have it delivered to her.

The case at bar cries aloud for a firm adherence to the rules heretofore laid down by the courts. Not only is the preposterous story of the engagement of marriage put forward, with the testimony of ear witnesses to the proposition of marriage and the acceptance of that proposition; not only is the incredible story advanced of the making of the alleged will, of its subsequent reduction to writing, but the record shows that the funds of the estate, the property of the complainants, the trust fund held by the administrator, were used in the endeavor to prevent the complainants from obtaining a position where they could assert the invalidity of the alleged will and prove the fraud by which it was manufactured and probated.

The authorities are clear that the funds of the estate were illegally used for such purpose.

Wilbur v. Wilbur, 17 Wash. 683.
Roche Admr. v. Coffee, 73 Cal. 281.
Estate of Wright, 49 Cal. 550.
Bates v. Ryberg, 40 Cal. 450.
Estate of Merry, 65 Cal. 287.
In re Jessup's Estate, 80 Cal. 625.
Paget v. Brogan, 67 Ark. 522.

When the court reads the evidence of Marie Carrau, her sisters and her brother-in-law, we are satisfied that the conclusion will be reached which was reached by Father Prefontaine, the pioneer priest of Seattle, whose parishioner John Sullivan was, who, on being cross-examined by counsel for Marie Carrau and asked whether he was not disappointed that Sullivan had not left something for the Church, said:

"I was not disappointed, because then I came to the conclusion that Mr. Sullivan had died suddenly and did not make a will." (483).

THE SUPERIOR COURT OF THE STATE OF WASHINGTON NEVER ACQUIRED JURISDICTION TO PROBATE THE ALLEGED WILL, NOR TO HEAR ANY PROOF IN SUPPORT OF IT.

Ball v. Clothier, 34 Wash. 299.
Corcoran v. Bell, Judge, et al. supra.
Medlock v. Merritt, 102 Ga. 212.
Charlebois v. Bowden, 6 Mont. 373.
Perez v. Perez, 59 Tex. 322.
Randolph v. Bayne, 44 Cal. 366.
Hemingway v. Reynolds, 98 Wis. 501.

The estate of John Sullivan was under the control of Terence O'Brien, the general administrator appointed on the 19th day of November, 1900. The Superior Court of the State of Washington had jurisdiction of the administration proceedings under the decree appointing O'Brien administrator.

The Circuit Court of the United States for the District of Washington was the court which first acquired jurisdiction to determine the question whether the alleged will had ever been made; if made, whether it was not invalid by reason of being forbidden by statute, and if not invalid, whether it could convey real estate.

The jurisdiction of the Circuit Court to determine these questions having been invoked and exercised, and in

the exercise of that jurisdiction the Circuit Court having determined that the alleged nuncupative will never was made, that it never was probated, and that the time for probating it had expired prior to the filing of the bill, it was bound to protect its jurisdiction in the only way in which it could be protected, by enjoining Marie Carrau and all persons representing her, from setting up any claim of right or title to the estate of John Sullivan, deceased, under the alleged will and the alleged decree of probate.

Julian v. Central Trust Co., 193 U. S. 93-112.
French v. Hay, 22 Wall. 250.
Dietzsch v. Huidekoper, 103 U. S. 494.
Sharon v. Terry, 36 Fed. 337.
Pitt v. Rodgers, 104 Fed. 387 (C. C. A. 9th Circuit).
Rodgers v. Pitt, 96 Fed. 668.
Fiske v. Railway, Fed. Case 4830.
Larning v. Osborne, 79 Fed. 657.

It is, therefore, respectfully submitted that the decree of the Circuit Court of Appeals should be reversed, and that if the decree of the Circuit Court should be reviewed that decree should be affirmed.

Respectfully submitted,

SAMUEL H. PILES,
GEORGE DONWORTH,
JAMES B. HOWE,
CHARLES H. FARRELL,
Counsel for Complainants.

FREDERIC D. McKENNEY,
Of Counsel.

OCT 14 1904

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 193.

HANNAH O'CALLAGHAN AND EDWARD COROORAN,
APPELLANTS AND PETITIONERS,

vs.

TERENCE O'BRIEN, ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED, AND MARIE CARRAU.

ON APPEAL FROM AND PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement Informing the Court that Certain Questions Involved in and Growing out of the Above-entitled Cause Have Been Certified to this Court for its Decision under the Provisions of Section 6 of the Act of March 3, 1891, Establishing Circuit Courts of Appeal.

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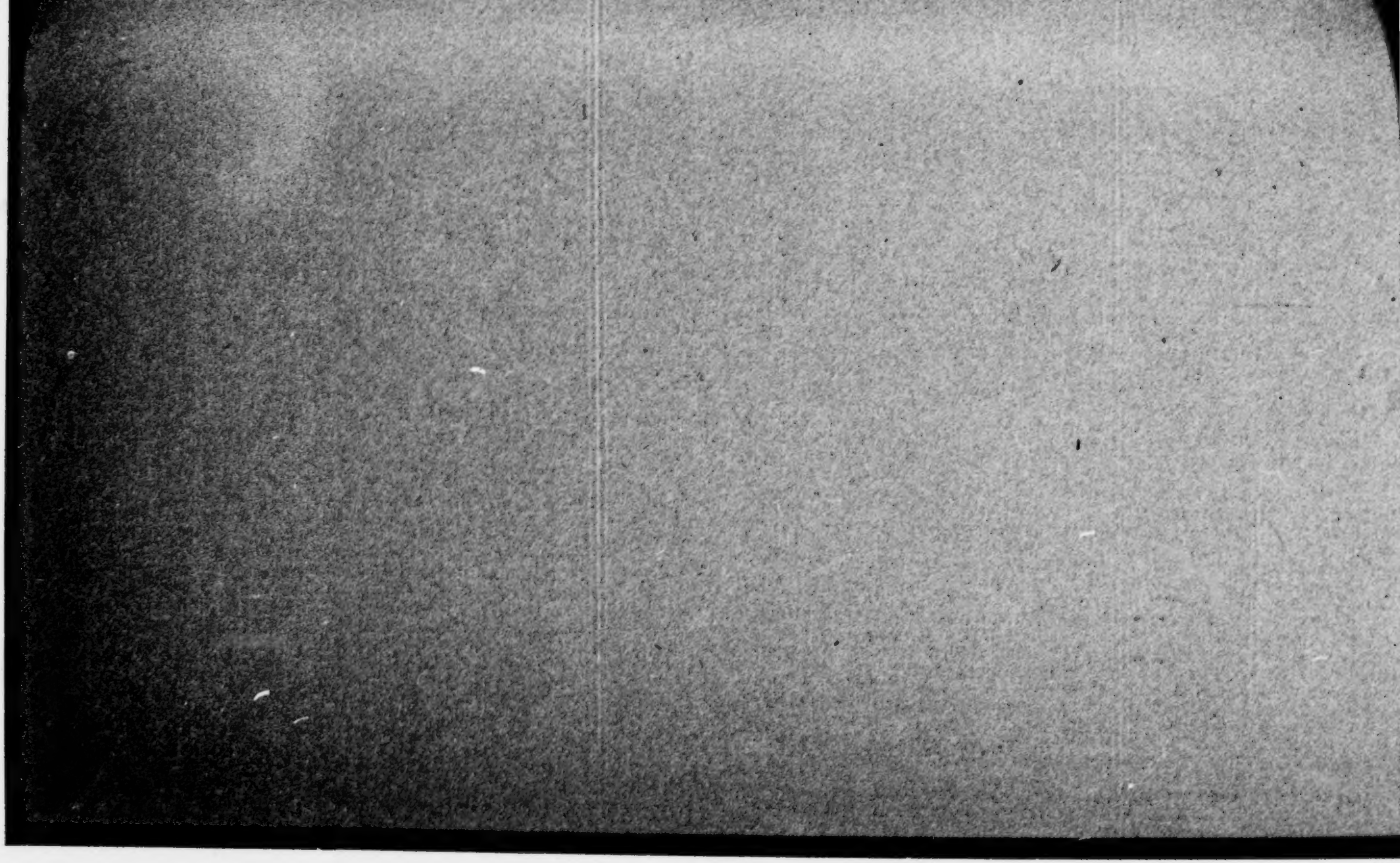

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 193.

HANNAH O'CALLAGHAN AND EDWARD CORCORAN, APPELLANTS AND PETITIONERS,

vs.

TERENCE O'BRIEN, ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED, AND MARIE CARRAU.

ON APPEAL FROM AND PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement informing the court that certain questions involved in and growing out of the above entitled cause have been certified to this court for its decision under the provisions of section 6 of the act of March 3, 1891, establishing circuit courts of appeal.

STATEMENT.

Since the docketing of the appeal and petition for writ of certiorari in the above cause the circuit court of appeals for the ninth circuit has certified to this court for its decision the following question of law, viz:

"Was the order of the circuit court of the United States for the district of Washington entered on the 29th day of March, 1904, adjudging the petitioners, J. W. Robinson and Marie Carrau, guilty of contempt of court in accordance with right and under authority of law."

The decree of the circuit court for the district of Washington entered in July, 1902, enjoined Marie Carrau and all persons representing her from setting up the alleged nuncupative will and decree of probate mentioned in the bill of complaint in any court or elsewhere, except in a court having appellate jurisdiction to review that decree. When Marie Carrau appealed to the United States circuit court of appeals she filed the ordinary supersedeas bond, but did not obtain any order under rule 93, in equity, from the judge making the decree, modifying or suspending the injunction during the pendency of the appeal. The injunction was therefore left in full force and effect. The circuit court of appeals did not render any decision granting or refusing an injunction, but decided that the circuit court never had jurisdiction and entered a decree reversing the decree of the circuit court for want of jurisdiction, and directing that court to dismiss the bill. The complainants appealed to the Supreme Court of the United States from the decree of the circuit court of appeals, and obtained from the court of appeals an order superseding its decree upon giving a bond in the sum of five thousand dollars. The order of the presiding judge provided that, upon the bond being filed, the mandate and all other proceedings should be stayed until the final determination of the appeal by the Supreme Court of the United States.

That appeal was duly docketed and is now pending in the Supreme Court of the United States. In March last,

notwithstanding the injunction of the final decree of the circuit court, Marie Carrau and one of her solicitors, J. W. Robinson, Esq., filed proceedings in the superior court of the State of Washington for King county, in which were set up the alleged nuncupative will and the alleged decree of probate, and they invoked the action of the State court to make to Marie Carrau an allowance out of the estate of John Sullivan, deceased. Counsel for complainants thereupon applied to the circuit court for a rule against Marie Carrau and Mr. Robinson, requiring them to show cause why they should not be attached for contempt. They were duly served with this rule.

And the matter came on before Circuit Judge Hanford for hearing on the record of the proceedings in the State court. He found that Marie Carrau and her counsel were in contempt, and made an order directing them to file a præcipe dismissing their proceedings in the State court, and committed them to jail until they should file such a præcipe. Marie Carrau and Mr. Robinson then obtained from Circuit Judge Gilbert a writ of *habeas corpus*, returnable in San Francisco before the United States circuit court of appeals. On the hearing before that court counsel for complainants contended, first, that that court had no original jurisdiction, and that therefore the petition for the writ should be denied; second, that the circuit court had jurisdiction to punish for contempt a violation of the injunction granted by its final decree; that that injunction ever since it had been granted was in full force and effect; that the decree could not be collaterally attacked except for want of jurisdiction, and that the question of jurisdiction was before the Supreme Court of the

United States both on appeal and on application for a writ of certiorari.

The court of appeals took the matter under consideration and on the 3d of October, 1904, as above stated, certified to the Supreme Court of the United States for determination the question whether the order of Judge Hanford of March 29, 1904, was lawful and right.

This certificate has been lodged in the clerk's office of this court and the parties interested notified of the requirements to be complied with prior to its being docketed. It will doubtless be docketed at once.

It has been thought proper to submit the foregoing statement to the court at this time, in order that it might act both upon the motion to dismiss and the application for certiorari with full information.

JAMES B. HOWE,
FREDERIC D. MCKENNEY,
For Appellants and Petitioners.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 193.

HANNAH O'CALLAGHAN AND EDWARD CORCORAN,
APPELLANTS,

vs.

TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED, AND MARIE CARRAU,
APPELLEES.

SAMUEL H. PILES,
GEORGE DONWORTH,
JAMES B. HOWE,
CHARLES H. FARRELL,
Counsel for Appellants.

FREDERIC D. McKENNEY,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 193.

HANNAH O'CALLAGHAN AND EDWARD CORCORAN,
APPELLANTS,

vs.

TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED, AND MARIE CARRAU,
APPELLEES.

Now come Edward Corcoran and Charles H. Farrell, as administrator of the estate of Hannah O'Callaghan, deceased, and suggest to the court that Hannah O'Callaghan died intestate after the docketing of the above appeal, to wit, on the 26th day of April, 1904, in the city of Cork, Ireland, leaving as her sole heir-at-law and next of kin the appellant, Edward Corcoran, and on the 10th day of May, 1904, Charles H. Farrell was, by the superior court in the State of Washington for King county, said county being the county wherein the said Hannah O'Callaghan left real and personal property, appointed administrator of said Hannah O'Callaghan, deceased, and that the said Charles H. Farrell immediately accepted said appointment as such administrator, qualified as such administrator, and entered upon the

discharge of the duties of said office, and he is now the duly qualified and acting administrator of said estate.

Wherefore the appellant Edward Corcoran and the said Charles H. Farrell, as the administrator of Hannah O'Callaghan, deceased, respectfully pray that said Edward Corcoran and Charles H. Farrell be substituted in the above-entitled suit in the place and stead of the said Hannah O'Callaghan, deceased.

SAMUEL H. PILES,
GEORGE DONWORTH,
JAMES B. HOWE,
CHARLES H. FARRELL,
Counsel for Appellants.

FREDERIC D. MCKENNEY,
Of Counsel.

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IN THE

Supreme Court of the United States,

October Term, 1903.

No. 598. 1903.

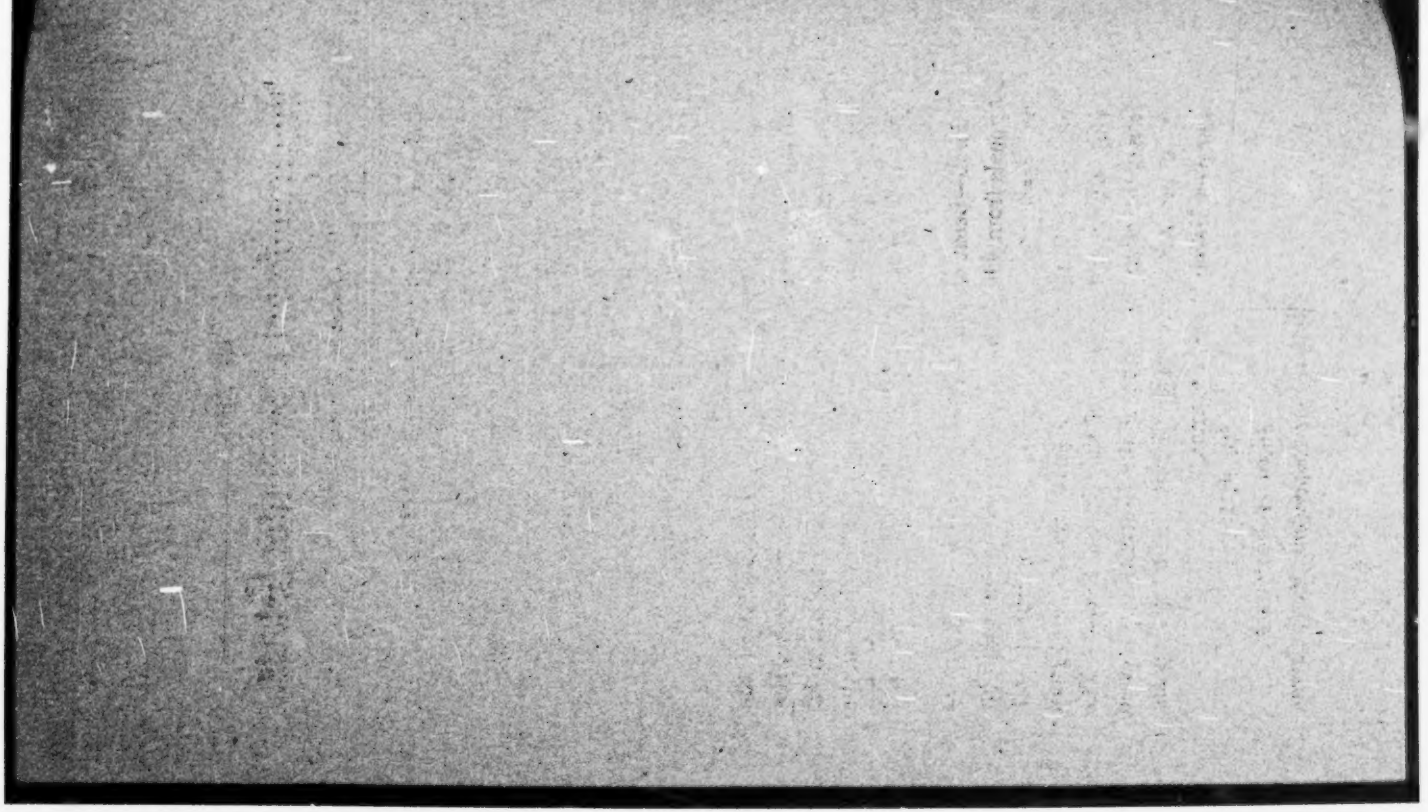
HANNAH O'CALLAGHAN and EDWARD CORCORAN,
Appellants,

vs.

TERENCE O'BRIEN, as Administrator of the Estate of JOHN SULLIVAN, Deceased, and MARIE CARRAU,
Respondents.

MOTION to Dismiss Appeal.

W. F. HAYS,
JOHN H. MITCHELL,
Attorneys for Respondent, Marie Carrau.



IN THE

Supreme Court of the United States.

October Term, 1903

HANNAH O'CALLAGHAN AND EDWARD CORCORAN, *Appellants*,

vs.

TERENCE O'BRIEN, as Administrator of the estate of JOHN SULLIVAN, deceased, and MARIE CARRAU, *Respondents.*

No. 593.

Motion to Dismiss Appeal.

Now come Terence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, Respondents, by their attorneys W. F. Hays and John H. Mitchell, and move this honorable court to dismiss the appeal in the above entitled suit, for the following reasons:

First.—Because the decree of the Circuit Court of Appeals from which this appeal is taken was final, for the reason that the jurisdiction, if it existed at all, depended entirely upon the opposite parties to the suit being aliens and citizens of the United States. The decree, therefore, in virtue of the provisions of section six of the Act establishing Circuit Courts of Appeals, approved March 3, 1891, is final.

W. F. HAYS,
JOHN H. MITCHELL,
Attorney for Respondent, Marie Carrau.

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IN THE

Supreme Court of the United States

HANNAH O'CALLAGAHAN and EDWARD CORCORAN, *Petitioners,*

vs.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*

No. 194

Brief of J. W. Robinson and J. P. Houser, Solicitors for Marie Carrau, in Opposition to the Petition for a Writ of Certiorari, Filed Herein.

J. W. ROBINSON,
J. P. HOUSER,
Solicitors for Marie Carrau.

RECORDER PUBLISHING COMPANY, OLYMPIA

IN THE

Supreme Court of the United States

HANNAH O'CALLAGAHAN and EDWARD CORCORAN, *Petitioners,*

vs.

TERENCE O'BRIEN, as Administrator of the Estate of John Sullivan, deceased, and MARIE CARRAU, *Respondents.*

No. 593.

Brief of J. W. Robinson and J. P. Houser, Solicitors for Marie Carrau, in Opposition to the Petition for a Writ of Certiorari, Filed Herein.

STATEMENT.

(*a*) On September 26, 1900, John Sullivan died in Seattle, Washington, seized of real and personal property of the estimated value of $500,000. He was engaged to respondent, Marie Carrau, and was to have been married to her on October 1, 1900. The night of his death he made a nuncupative will, devising all his property to Marie Carrau. The next morning after his death, Marie Carrau told Father Sweere, her spiritual adviser, of the oral will, and requested him to inquire of some lawyer whether or not an oral will was valid, which he did and in a few days informed her that an oral will was not good

in the State of Washington. That the deceased left no immediate relatives. Shortly after his death a special administrator was appointed in the Probate Department of the Superior Court of King County, and on November 19, 1900, respondent O'Brien was appointed administrator and has been in possession of the assets of said estate ever since, and said estate has been ever since, and is now being, administered in the Probate Department of said State Court. Believing that the oral will was void, Marie Carrau joined in asking for the appointment of an administrator; some time thereafter she accidentally learned from an attorney that an oral will was valid in Washington, and she immediately thereafter towit, on March 8, 1901, upon petition, caused this nuncupative will to be probated, and which was probated by the usual decree in the Probate Court and the former administrator continued as the administrator of the estate.

(*b*) Under the statutes of the State of Washington, any "person interested" may within one year contest a will so probated, and a large number of persons claiming to be the "only heirs" of the deceased, gave notice of such claim and appeared in the State Court "*In re* Estate of John Sullivan, deceased," a number of whom filed "petitions in contest" in the probate department of said court in said estate, contesting the validity of said will and with such claimants so appearing and filing contests, were these petitioners.

(*c*) Among such claimants was Eugene T. Sullivan, who was at that date, and for many years prior thereto had been, a citizen and resident of the State of Washington, as was also Marie Carrau and Terence O'Brien, and these contests of said will are still pending, undetermined in the State Court "*In re Estate of John Sullivan, deceased.*"

(*d*) On June 20, 1901, these petitioners, as British subjects, filed a bill in equity against Marie Carrau, as legatee under said will and Terence O'Brien as administrator of said estate, in the United States Circuit Court of the District of Washington. The purpose of the bill was to contest the will so probated and revoke the probate thereof, and in addition to the allegation of adverse citizenship, the bill alleged that the will was secured and probated by fraud, and that the probate court had not issued proper citation, and hence had no jurisdiction to probate the will. The administrator appeared and disclaimed any interest in the estate other than as an administrator appointed by the State Court. Marie Carrau appeared by her solicitors and at every stage of the proceeding objected to the jurisdiction of the Federal Court principally upon two grounds:

1st. Because the Circuit Court had no jurisdiction of the "subject matter," and,

2nd. Because it appeared upon the face of the pleadings that if all the "*necessary*" parties were before the court, such court would be ousted of its jurisdiction, it appearing upon the face of the pleadings that Eugene T. Sullivan, claiming to be the only heir of the deceased, was a citizen and resident of the State of Washington, and claiming in opposition to Marie Carrau, as the legatee.

(*e*) The Circuit Court held that it had jurisdiction, and after trial entered a decree against Marie Carrau, cancelling the will and revoking the decree in the State Court, probating the same.

From this decree, Marie Carrau appealed to the United States Circuit Court of Appeals for the Ninth Circuit, and the court reversed the Circuit Court, for the reason that the Circuit Court was without jurisdiction of the subject matter of

the suit, and further because of the fact that all the necessary parties were not before the court, who if made parties would have ousted the court of jurisdiction, and directed the Circuit Court to dismiss the bill.

See *Carrau v. O'Callagahan et al.*, 125 Fed. 657.

(*f*) And because of this reversal the petitioners apply here for a writ of certiorari.

POINTS AND AUTHORITIES.

1. The petition for a writ contains many erroneous statements as to the facts relating to the merits of the action, but we deem it unnecessary to burden this brief with any disputes as to such facts, for the reason that the court in certiorari proceedings does not consider the evidence but examines the allegations of fact as they appear upon the face of the pleadings and not otherwise, and hence this court will look at the face of the record and determine therefrom whether or not this writ should issue.

NO JURISDICTION OF THE "SUBJECT MATTER."

Upon the face of the pleadings it appears that at the time the suit in equity was instituted in the Circuit Court, and long prior thereto, the estate of John Sullivan, deceased, was being administrated in the Probate Department of the State Court, at Seattle, having jurisdiction of probate matters, and we here refer to the decision of the United States Circuit Court of Appeals, in the case of,

Carran v. O'Callaghan et al., 125 Fed. 657,

which contains a statement of the facts alleged in the pleadings and sets forth fully the probate statute laws of the State of Washington, showing that the contest of a will is strictly a probate proceeding, and that the State Court of Washington, having probate jurisdiction, has the sole and exclusive jurisdiction thereof, and as was said by the Circuit Court of Appeals, in 125 Fed., *supra*:

"A petition to probate a will is the beginning of a special proceeding and that the order admitting the will to probate is not final so long as the proceedings may be taken (under the

statute) to revoke the probate. In all subsequent stages the contest is but a part of the proceeding to probate the will and is not a new or distinct proceeding. The subject matter is the same and the ultimate issue, to wit, whether the will in question should stand as probated, is the same."

We also call the court's attention to the fact that the Supreme Court of the State of Washington, in construing the statute with reference to probate proceedings, has always held that the proper court under the statutes of the State in which to contest the validity of a will, is that Department of the Superior Court exercising probate jurisdiction.

Under the laws of the State of Washington, that Department of the Superior Court having probate jurisdiction as a court of law, is vested with the sole jurisdiction over every question involved in this case. In the exercise of this power as a court of law, it must determine all questions relating to the distribution of estates, pass upon the validity of wills, the question of heirship, fraud and all other questions affecting the validity of wills, and that forum affords a complete, efficient, prompt and adequate remedy at law for these petitioners, and is exclusive.

Section 6110 and section 6347 to 6377, Bal. Code Wash. Vol. 2, contemplate the trial and determination in the Probate Department of all questions of heirship as well as the right to take under wills, and the contest of a will necessarily includes the determination of the questions of kinship as an issue incident to the right to contest.

The Supreme Court of the State of Washington, from its organization, has held that the Superior Court acting in probate has the power in the administration of estates, to determine every question and grant all the relief presented and

sought by these complaints, and that the Probate Department has the sole and exclusive jurisdiction to do so.

Webster v. Seattle Trust Co., 7 Wash. 651.
Griffin v. Warburton, 23 Wash. 231.
State, ex rel. Stratton, v. Tallman, 25 Wash. 295.
State, ex rel. Stratton, v. Tallman, 29 Wash. 317.
In re Alfred's Estate, 27 Wash. 175.
Browder v. Finney, 30 Wash. 74.
Filley v. Murphey, 30 Wash. 1.
In re Murphey's Estate, 30 Wash. 9.
Reformed Presbyterian Church v. McMillan, 31 Wash. 643.

Under the general practice in the State of Washington, neither the courts of law nor equity have ever assumed to exercise jurisdiction over probate matters, and where the State Court has never assumed such jurisdiction or adopted such practice, the Federal Courts will not.

Bedford Quarries Co. v. Thomlinson, 95 Fed. 208.
Walker v. Brown, 63 Fed. 204.
Wahl v. Brown, 63 Fed. 680.
In re Cilley, 58 Fed. 977-982-984 and 989.
Ellis v. Davis, 109 U. S. 485.
Simmons v. Saul, 138 U. S. 439.
Broderick's Will, 21 Wall. 503.
Reed v. Reed, 31 Fed. 53.
In re Aspinwall's Estate, 83 Fed. 952.
Oakley v. Oakley, 64 Fed. 246.
Blythe v. Hinckley, 84 Fed. 250.

The case of *Bedford Quarries Co. v. Thomlinson*, above cited, was an action, brought in the United States Circuit Court to charge the executors of an estate with a claim held by complainant, and the Circuit Court of Appeals held that inasmuch as the Probate Court gave an adequate remedy at law, the Circuit Court had no jurisdiction.

The case of *Wahl v. Franz*, supra, was an action to revoke the probate of a will and cancel the will itself on the ground of fraud, etc., presenting certain features resembling some of the questions at issue in the case at bar. It was held by the Circuit Court of Appeals that the Probate Court having jurisdiction, no jurisdiction existed in the Federal Court, and further that such an action was neither a "suit of civil nature at law or in equity" within the meaning of the federal judiciary act.

This case is a well considered one and becomes valuable in view of the fact, that the question of the apparent conflict of authority is fully and carefully discussed and the authorities pro and con cited and considered both in the prevailing opinion and the dissenting opinion of Judge Sanborn.

NECESSARY PARTIES OUSTS JURISDICTION.

We think the law as declared by the United States Circuit Court of Appeals, 125 Fed. supra, to the effect that all the necessary parties were not before the Circuit Court, and if made parties would have ousted the court of its jurisdiction, cannot be seriously disputed. The face of the record discloses the fact that a large number of persons claiming to be the "only heirs" of the deceased were and are contesting with Marie Carrau in the State Court, the validity of the will, and their right to inherit this estate, and that Eugene T. Sullivan is among this number, and that he is a citizen and resident of the State of Washington and it must be conceded that if these claimants who are citizens had been made party complainants with these petitioners in the Federal Court, the court would have been ousted of its jurisdiction.

A court of equity will not assume jurisdiction to determine the rights of individuals, unless by so doing, it is enabled to

make a complete and final decree, not only as to the subject matter involved, but as to the persons interested, and whenever it is made to appear that necessary parties are not before the court, they must be brought in, and if bringing them in, the court would be ousted of its jurisdiction, the action will be dismissed.

Mallow v. Hinde, 12 Wheat. 197.
Cameron v. McRoberts, 3 Wheat. 591.
Hardy v. Handy, 11 Wheat. 132.
Elmdorf v. Taylor, 23 U. S. 167.

The Supreme Court of the United States in the more recent case of the *State of California v. Southern Pacific Co.*, 157 U. S. 229, reviews the cases cited above, reaffirming the doctrine therein laid down, and in doing so uses the following language:

"Can the Court proceed to a decree, as between the State and the Southern Pacific Company and do complete and final justice without affecting other persons not before the Court, or leaving the controversy in such a condition that its final termination might be wholly inconsistent with equity and good conscience?"

It appeared that a decree in that case could not directly affect the city of Oakland, but by making it a party the Court would be ousted of its jurisdiction, yet the Court proceeds to say:

"We have no hesitation in holding that, when an original cause is pending in this court, to be disposed of here in the first instance, and in the exercise of an exceptional jurisdiction it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined even though they might not be technically bound in subsequent litigation in some other tribunal."

In *Gregory v. Stetson*, 133 U. S. 579,

Justice Lamar, after quoting from Story's Eq. Pl., lays down

the rule that all parties must be brought before the court and says:

"By this means the court is enabled to make a complete decree between the parties, to prevent future litigation by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done either to the parties before it or to others, who are interested in the subject matter, by a decree, which might otherwise be grounded upon a partial view only of the real merits."

"The general question involved therein has been before this court a number of times and it is now well settled that, notwithstanding the statute referred to and the 47th Equity Rule a Circuit Court can make no decree in a suit in the absence of a party whose rights must necessarily be affected thereby."

In the recent case of *Minnesota v. Northern Securities Co.*, known as the "Merger Cases," 22 Sup. Ct. Rep., at page 322, the court says:

"The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject matter of a suit are to be made parties to it, so that there may be a complete decree which shall bind them all. By this means the Court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits and to make it perfectly certain that no injustice is done either to the parties before it or to others who are interested in the subject matter, by a decree which might otherwise be granted upon a partial view of the merits. This is founded upon clear reasons and may be enforced by the Court *sua sponte*, though not raised by the pleadings or suggested by counsel."

The inability of the Court to proceed appearing at any time before final judgment will warrant a dismissal and the Court should on its own motion if necessary dismiss the cause.

"Nor does it matter that the parties to this suit make no objection on account of a want of parties. Where that fact appears as in this case, the Court will on its own motion refuse to proceed further in the case."

Beasley v. Shirely, supra.

It must therefore appear that the case at bar falls directly within the rule above laid down for the reasons already stated.

The United States Circuit Court in its opinion in the case of

Carrau v. O'Callaghan et al, supra,

said:

"We are of the opinion that the court below was without jurisdiction of the subject matter of the suit and further that all necessary parties were not before the court, some of whom if made parties would have ousted the court of jurisdiction. On both of these grounds we think the court below should have dismissed the bill at the complainants' cost."

And on page 671, in speaking of the case of

Byers v. McAuley, 149 U. S. 608,

which is relied upon by the petitioners, the court said:

"There is in the case no suggestion of the absence of any necessary or proper party and no question of that nature was presented or considered. In the case at bar, however, there were persons not made parties to the suit who claimed to be the sole and exclusive heirs of the deceased and who if made parties, would on the grounds of citizenship, oust the Federal Court of any jurisdiction in the premises. * * * Those claimants were, therefore, essential parties to the controversy concerning the heirship in question and we think counsel for the appellees altogether mistaken in saying that there is anything to the contrary in

Byers v. McAuley,

or in the case of

Payne v. Hook, 7 Wall. 425."

It is conceded that the Superior Court acting in probate, must distribute the assets of the estate and we insist that in doing so it must determine who are the heirs or legatees and to whom the estate shall be distributed. The State Court of Washington has so far held the will valid and the statute authorizing such wills constitutional, and the Federal Courts usually follow the rule of construction adopted by the State Courts.

If the jurisdiction of the Federal Court can be maintained in this suit, then more than 50 per cent of the contests of wills, and all questions relating to estates, may be brought into the Federal jurisdiction, and the jurisdiction of the United States Circuit Court under the act of 1887 as corrected by the act of 1888 enlarged rather than reduced the jurisdiction under such a construction. It is the policy of the Federal Courts to concede jurisdiction to the State Courts where the statute confers special jurisdiction on the State Court, and no independent suit can be brought in any other department for the adjudication of questions within such special jurisdiction, and it is only where such special jurisdiction is ineffective to deal with the question at issue, that a court of equity can ever assume jurisdiction.

Bailey v. Bailey, 48 Am. St. 826.
Peterson v. Vandeburt, 77 Am. St. 671.
Deck v. Durkey, 73 Am. St. 559.

Solicitors for petitioners here insist, as they have always insisted, that the contest of a will in the State of Washington, is a suit *inter partes*, but the United States Circuit Court of Appeals as well as the Supreme Court of the State of Washington, has held that a petition to probate a will is the beginning of a special proceeding and that all subsequent stages of a contest is but a part of the proceeding to probate the will, and is not a new proceeding, and this doctrine has been fully recognized in this State.

Actions *inter partes* in the Superior Court of the State of Washington are commenced *by service of a summons.*

Ballinger's Code, Section 4869.

The Superior Court having jurisdiction of the subject matter either in law or equity, secures jurisdiction of the person *by summons, but in all probate proceedings citations instead of*

summons is used, and this distinction is ever present, both in the statute and the Constitution. The process in all suits *inter partes*, is a summons, and in all proceedings in probate, is a citation.

The solicitors for the petitioners contend that any action having for its object or effect the contest of the validity of a will, as provided in,

Sec. 6110 Ballinger's Code,

is a suit in equity, but if this procedure is to be applied to

Sec. 6110 of Ballinger,

with reference to the validity of a will, then it must also apply to that portion of the section which provides for the proving or probating of a will, which has been rejected, so that the procedure to have the will proven, which has been rejected, by the Probate Court, must also be instituted in a court of equity, and not in the Probate Court; but it will scarcely be argued that the Superior Court as a court of equity, has jurisdiction to probate a will, when that power has been lodged exclusively with the Court sitting in Probate, yet that is the effect of appellees' contention.

Suppose the Probate Court, on March 8, 1904, had rejected the nuncupative will, and suppose that there were no other heirs of the deceased, except these petitioners, subjects of the Kingdom of Great Britian, would it be claimed that the respondent, Marie Caran, could have filed her petition in the Federal Court, alleging the proper diversity of citizenship and value sufficient in amount to come within the jurisdiction of the Circuit Court of the United States, and maintained her action to have the will proven which had been rejected? Or, in the event she had filed such petition in the Superior Court

against these petitioners to have such will proven, could they have removed the action to the Circuit Court of the United States? The diversity of citizenship and the value of the subject matter, would not have been changed by the rejection of the nuncupative will, and they were not changed by the decree probating the will.

Again, had the nuncupative will been rejected and a decree entered by the Probate Court, finding all the jurisdictional facts necessary to give the Probate Court jurisdiction to hear the petition for probate, could Marie Carran have maintained a bill in equity in the United States Circuit Court, against these petitioners, charging them with fraud, in securing the rejection of the probate of said will, and that such will be proven and a decree of probate entered accordingly?

If she could not maintain such a suit, then these petitioners could not maintain their suit, because the one proposition is the converse of the other.

JURISDICTION TO PROBATE THE WILL.

It is claimed that this nuncupative will was probated without jurisdiction because no notice was given to the heirs or next of kin, but the face of the record discloses the fact that the State Court in probating the will found all the jurisdictional facts necessary to give the court jurisdiction to probate the will; but even admitting that the notice or citation was irregular or insufficient, it is admitted by these petitioners that there was at that time, no known heirs or next of kin described in the statute to whom notice should be given and the statute with reference to such notice does not contemplate service at large upon every one who may claim to have an interest in the estate; certainly the statute does not contemplate that notice shall be served upon

persons residing in Great Britian who may claim an interest in the estate.

Again, the statute preserves the rights of all "persons interested" for a period of one year within which they may test every question in the probate Department where the estate is being administered, and it will hardly be claimed that this notice was necessary to give the court jurisdiction of the subject matter. The court already had jurisdiction of the subject matter and for many months had been administering this estate.

But even if notice was required, these petitioners, as appears from the face of the record, waived their right to any notice if ever entitled to any, by appearing in said probate proceedings and filing a contest within the year, seeking exactly the same relief they sought in the Circuit Court.

We are not inclined to dicuss the constitutionality of the statute with reference to nuncupative wills, because as we understand, that question will not be considered upon the petition for this writ, but we suggest to this Honorable Court that this statute has been held constitutional by he State Court in probating the will and in administering the estate with reference thereto.

But if there was any defect in the title of this law, which was enacted in 1854 and amended in 1873, it was wholly cured when the laws of the Territory were codified and incorporated in the Code of 1881. The Legislature enacted a provision in the Code of 1881 in lieu of the act of 1854, as amended in 1873 and thus these provisions were made the law upon the question of nuncupative will, and the Supreme Court of the State of Washington has fully confirmed our position in this particular, in the case of

Philbrick v. Andrews, 8 Wash. 7.

The Circuit Court in the suit of these petitioners against O'Brien and Carran, was urged to review the act of the State Court in admitting the will in question to probate; to vacate the same and the court did so, but the Circuit Court of Appeals held that the Circuit Court had no such jurisdiction, and in addition thereto, the Circuit Court was asked to declare the State law upon which the will rests, unconstitutional in advance of the State Court, notwithstanding the fact that the same question was then pending before the State Court, and the pleading in that court setting up the will in question had already been held good on demurrer. Under such circumstances the Federal Courts will refuse to pass upon the constitutionality of the laws or if it does so will adopt the conclusion of the State Court.

Pelton v. National Bank, 101 U. S. 143; 25 Law Ed. 901.

Cummings v. National Bank, 101 U. S. 155; 25 Law Ed. 904.

Hills v. Exchange Bank, 105 U. S. 319; 26 Law Ed. 1052.

Western Union Telegraph Co. v. Poe, 61 Fed. 469.

Same case, 64 Fed. 11.

The case of the *Western Union Telegraph Co. v. Poe, supra*, presents our contention fully, and reviews the authorities. In that case the Circuit Court held the question of the constitutionality of the act in question for four months waiting for the State Court to pass upon it, and finally, at the urgent request of complainants, did pass upon it and held the act unconstitutional. Afterwards the State Court passed upon the act and held it constitutional and the Circuit Court reversed its former ruling and held in harmony with the decision of the State Court.

We respectfully submit that the writ ought not to issue, because it appears upon the face of the record that the Circuit

Court had no jurisdiction of the subject matter, and that if such court had jurisdiction, it would be ousted of its jurisdiction, were all the necessary parties before the court, and also because the decision of the Circuit Court of Appeals was a final decision under the act of March 3, 1891, and having clearly and rightfully declared the law with reference to the question of jurisdiction, these petitioners ought not to be permitted to further delay and interfere with the due administration of this estate in the Probate Court in the State, in which Court their rights may be fully protected.

Respectfully submitted,

J. W. ROBINSON,
J. P. HOUSER,
Solicitors for Marie Carrau.

FILE COPY.

IN THE

Supreme Court of the United States.

October Term, 1893.

No. 956 1893.

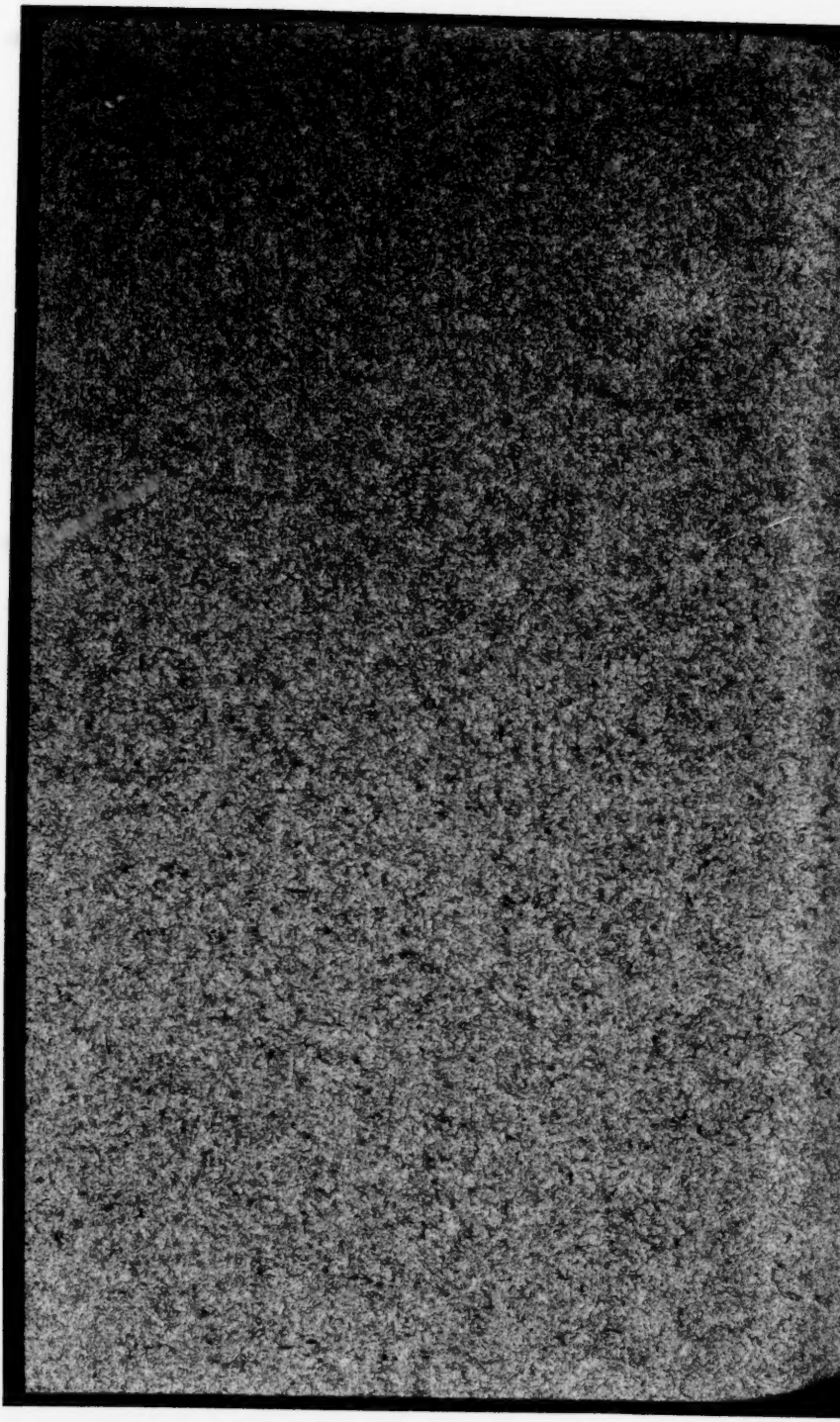
HANNAH O'CALLAGHAN and EDWARD CORCORAN,
Appellants,

vs.

TERENCE O'BRIEN, as Administrator of the Estate of JOHN SULLIVAN, Deceased, and MARIE CARRAU,
Respondents.

Brief of Respondents in Support of Motion to Dismiss Appeal.

W. P. HAYS,
JOHN H. MITCHELL,
Attorneys for Respondents.



IN THE

Supreme Court of the United States.

October Term, 1903.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, *Appellants.*
vs.
TERENCE O'BRIEN, as Administrator of the Estate of JOHN SULLIVAN, deceased, and MARIE CARRAU, *Respondents.*
No. 593.

Brief of Respondents in Support of Motion to Dismiss Appeal.

This is a motion to dismiss the appeal taken by Hannah O'Callaghan and Edward Corcoran, appellants, from the decree of the Circuit Court of Appeals for the Ninth Circuit, rendered September 14, 1903.

The question raised by this motion is simply this: That the decree of the Circuit Court of Appeals was final, for the reason that the sole ground of jurisdiction in the suit was the diversity of the citizenship of the parties.

Enough of the record in the case, and citations to the record now before the Court, will now be presented to enable the Court to determine the question. We con-

fidently insist that there is nothing in the record from the beginning to the end to show jurisdiction in the Federal Court, save and except the fact of the diversity of the citizenship of the parties.

Statement.

The following facts appear from the record in the case:

One John Sullivan died in the City of Seattle, State of Washington, on September 26th, 1900, seized of real and personal property of the estimated value of nearly five hundred thousand dollars. At the time of his death he was engaged to be married to the respondent, Marie Carrau, and the date of the marriage had been fixed for about October 1st, 1900. A few hours preceding his death he made a nuncupative will, devising all of his property to Marie Carrau, his fiancee.

The next morning, but a few hours after his death, Marie Carrau—being a Catholic—told Father Sweer, her spiritual adviser, of the oral will, requesting him to make inquiry of some lawyer, whether such a will was valid. Father Sweer made inquiry, and shortly afterwards informed her that an oral will was not good in the State of Washington.

It appears from the record that the deceased left no immediate relatives, no father, mother, or lineal descendents. Shortly after his death a special administator was appointed in the probate department of the Superior Court for King County, State of Washington, and on November 19th, 1900, the respondent, Terence O'Brien,

was appointed administrator and has been in possession of the estate ever since; and said estate has ever since been and is now in the course of administration in the probate department of said Court, and was at the date of the filing of the bill in this suit.

Relying on the advice given her by her spiritual adviser to the effect that the will was void, Marie Carrau did not ask for the appointment of an administrator. Some time after this she accidently learned from an attorney that an oral will was valid in Washington. She immediately, on getting this information, on March 8th, 1901, presented her petition to the Probate Court, praying that the nuncupative will be admitted to probate. Acting on this petition, said Probate Court admitted this will to probate by the usual, ordinary decree in a Probate Court, and Terence O'Brien was continued as administrator of said estate under said probated will.

The statutes of the State of Washington provide that any person interested may within one year contest a will so probated. Carrau *vs.* O'Callaghan *et al*, 125 Fed., 657. Quite a number of persons, claiming to be the only heirs of the deceased, gave notice of such claim and appeared in the State Court, in the case of the estate of John Sullivan, deceased. Among the different persons appearing in said court and petitioning in contest therein, alleging the invalidity of said will, were the petitioners, Hannah O'Callaghan and Edward Corcoran. Another claimant was Eugene T. Sullivan, who was at that date and for many years prior thereto a citizen and resident of the State of Washington, as was also

Marie Carrau and Terence O'Brien. All these contests of said will are still pending and undetermined in the State Court in the case in that court of the estate of John Sullivan, deceased. They were also pending at the date of the filing of the bill in this suit.

This suit was commenced June 20th, 1901, in the Circuit Court of the United States for the District of Washington, Northern Division, by a bill filed against Marie Carrau as legatee under said will, and Terence O'Brien as administrator of said estate, by the petitioners, Hannah O'Callaghan and Edward Corcoran, claiming to be British subjects and averring that the respondents were both citizens of the State of Washington. As will clearly appear from the record the principal and only purpose of the bill was to contest the nuncupative will so probated and revoke its probate. In addition to the allegation of diverse citizenship, the bill alleged that the will was secured and probated by fraud, and that the Probate Court did not issue proper citation, and hence it was alleged had no jurisdiction to probate the will. The administrator, O'Brien, by answer disclaimed any interest in the estate other than administrator appointed by the said State Probate Court. The respondent, Marie Carrau, appeared by her solicitors, made denial of any fraud, denied the jurisdiction of the Circuit Court of the United States, and contested the proceeding from beginning to end. The specific grounds of objection to the bill being, *first*, no jurisdiction of the subject matter, and, *second*, because it appeared upon the face of the bill that all the *necessary* parties were not before the court, and if

they had been the court would have been ousted of its jurisdiction, as Eugene T. Sullivan, who claimed to be the only heir of the deceased, was a citizen of the State of Washington, contesting the right to the estate with Marie Carrau.

The Circuit Court held that it had jurisdiction, and after a trial entered a decree against Marie Carrau, cancelling the will and revoking the decree of the State Probate Court probating the same. From this decree an appeal was taken to the United States Circuit Court of Appeals for the Ninth Circuit. That court reversed the Circuit Court, giving as reason, that the Circuit Court was without jurisdiction of the subject matter of the suit, and also because all the *necessary* parties were not before the court, and if made parties would have ousted the jurisdiction of the court. The Circuit Court of Appeals directed the Circuit Court to dismiss the bill.

Carrau *vs.* O'Callaghan, et als, 125 Fed., 657.

From this decision of the Court of Appeals the petitioners are here on appeal.

The Record.

Your Honors are cited to the following portions of the Record, now before the Court, which, it seems to us, show conclusively that the only ground of jurisdiction in the Circuit Court related to the parties, that of diverse citizenship; and further, that the Circut Court had no jurisdiction of the subject matter of the suit.

First. The bill of complaint set out in *haec verbae*

Record, Volume 1, pages 6–21.

Second. Motion of respondent, Marie Carrau, and affidavit of W. F. Hays, her solicitor.

Record, Volume 1, pages 24–25.

Third. Motion to dismiss the action submitted by the respondent, Marie Carrau.

Record, Volume 1, pages 29–32.

Fourth. Claim of heirship submitted by one Timothy Sullivan

Record, Volume 1, page 31.

Fifth. Plea in Abatement of respondent, Marie Carrau.

Record, Volume 1, pages 35–36.

These different pleas of the respondents were overruled by the Court.

Record, Volume 1, page 154.

Sixth. Answer of Marie Carrau.

Record, Volume 1, pages 64–79, inclusive.

Seventh. Replication.

Record, Volume 1, pages 84–85.

These several pleadings made up the issues involved, and a careful examination of these pleadings and of the issues joined by them discloses the fact beyond question that there is nothing in the record that would confer jurisdiction on the Federal Court save and except the diverse citizenship of the parties.

In considering the matter, however, attention is called to the opinion and decree of Circuit Judge Hanford—

Eighth. For opinion see

Record, Volume 1, pages 224–243, inclusive.

Ninth. And for the decree entered in that Court by Circuit Judge Hanford see

Record, Volume 1, pages 243–247, inclusive.

The attention of the Court is also directed to the opinion, judgment and decree of the Circuit Court of Appeals.

Carrau *vs.* O'Callaghan, 125 Fed., 657.

United States *vs.* Taylor, 147 U. S., 695.

Loeb *vs.* Columbia Township Trustees, 179 U. S., 483.

It seems clear that the decree of the Circuit Court of Appeals was final.

Sec. 6, Act March 3, 1901, Vol. 1, Supplement U. S. Revised Statutes, 903.

Ayres *vs.* Polsdorfer, 187 U. S., 585.

Rule eight of the Supreme Court.

In Loeb *vs.* Columbia Township Trustees, supra, this Court said:

> "The rule of our court referred to does not apply alone to cases brought here from the highest Court of a State. It applies, in terms, to all cases brought to this Court by writ of error or appeal. What, therefore, was said in the above cases as to the object and effect of the rule applies to records from a Circuit Court of the United States."

And in the same case the court said:

> "The subject was again considered in Gross *vs.* United States Mortgage Co., 108 U. S., 477, 486, which came from the Supreme Court of Illinois.

> After referring to what was said in Murdock *vs.* City of Memphis, this Court said: 'We can not, therefore, doubt that in the existing state of the law it is our duty to examine the opinion of the Supreme Court of Illinois, in connection with other portions of the record, for the purpose of ascertaining whether this writ of error properly raises any question determined by the State court adversely to a right, title, or immunity under the constitution or laws of the United States and specially set up and claimed by the party bringing the writ.'"

There is nothing in the case involving the construction or the application of any Act of Congress. There is no claim upon the part of the petitioner that the constitution or law of a State is in contravention of the Constitution of the United States.

The only claim is this: It is conceded the Probate Court of the State of Washington had jurisdiction of the subject-matter. It is claimed, however, in the bill of complaint, that the necessary processes were not served to enable the Court to obtain jurisdiction of the parties, and it is alleged that the Court proceeded without jurisdiction, and it is claimed if the Court is permitted to proceed and distribute the estate, petitioners will be deprived of their property without due process of law, and that the proceeding would, therefore, be in violation of the 14th amendment to the Constitution of the United States. This averrment, however, in the bill of complaint, to the effect that the Probate Court proceeded without jurisdiction of persons, is specifically denied in the answer.

The answer of Marie Carrau says:

> "The defendant, Marie Carrau, denies that the Supreme Court of King County, Washington, acted wholly or at all without jurisdiction, in probating said non-cupative will, but on the contrary said Court had and has exclusive jurisdiction in the premises." (Record, vol. 1, pages 64–79.)

But aside from this, however, if, as alleged, the Court was wholly without jurisdiction, then the judgment and decree of the Court is absolutely void. No decree of distribution issued in pursuance of such a decree can have any effect whatever, but is open to attack whenever and wherever its validity is relied upon.

The rights of the petitioners could not be affected by any action taken under a decree that is void for want of jurisdiction. It can not be said that their property, taken under and in pursuance of such a decree, has been taken without due process of law; in fact, it has not been taken at all, and property distributed under such a decree can be recovered back by the petitioners by a proceeding in the State court, by showing that the decree as to the contest between claimants was without jurisdiction and void. Property taken under a void decree is not taken at all, much less taken without due process of law.

The record shows, moreover, the Court had jurisdiction of the persons and of the subject-matter. It was not a proceeding *inter-partes*, but a special proceeding in the nature of a proceeding *in rem*, and the record shows that the statutes of the State were fully complied with.

It is respectfully submitted, therefore, this appeal should be dismissed for two reasons:

First—Because the decision of the Court of Appeals is final under Section 6 of the Judiciary Act of March 3, 1891, and,

Second--Because it is clear from the record that neither the Circuit Court, the Circuit Court of Appeals, nor this Court has any jurisdiction of the case.

In support of the latter contention, see our brief filed in this case in opposition to the petition for writ of certiorari.

Respectfully submitted.

W. F. HAYS,
JOHN H. MITCHELL,
Attorneys for Respondent, Marie Carrau.

FILED
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IN THE

Supreme Court of the United States.

October Term, 1903.

No. 592 /93.

HANNAH O'CALLAGHAN and EDWARD CORCORAN, Appellants,

vs.

TERENCE O'BRIEN, as Administrator of the Estate of JOHN SULLIVAN, Deceased, and MARIE CARRAU, Respondents.

BRIEF IN OPPOSITION TO MOTION FOR WRIT OF CERTIORARI.

W. F. Hays,
John H. Mitchell,
Attorneys for Respondents.

IN THE

Supreme Court of the United States.

October Term, 1903.

HANNAH O'CALLAGHAN AND EDWARD CORCORAN, *Appellants*,

vs.

TERENCE O'BRIEN, as Administrator of the estate of JOHN SULLIVAN, deceased, and MARIE CARRAU, *Respondents*.

No. 593.

BRIEF IN OPPOSITION TO MOTION FOR WRIT OF CERTIORARI.

The application for certiorari to the United States Circuit Court of Appeals is made for the sole reason that petitioners "doubt whether the right of appeal exists."

The decision of the Circuit Court of Appeals is final.

Ayres *vs.* Polsdorfer, 187 U. S., 585;

Act of March 3, 1891, (see 517 par. 5, 26 Stat., 828).

The Court having been met at the very threshold with two questions, as shown by the bill, (Rec., Vol. 1, pp. 6-21, incl., 29-32, and 64-79, incl.) ~~either or~~ both of

which are inimical to Federal jurisdiction: (1st) the subject of the litigation was a probated will, and an estate being then administered in the Probate Court of the State of Washington, *a court having exclusive jurisdiction of the subject-matter;* (2d) the jurisdiction of the Federal Court, under said bill, being invoked upon the sole ground of *diverse citizenship*, which alleged "diversity" upon the face of the pleadings and issues is shown *not in fact to exist.*

See Rec., Vol. 1, pp. 29-32, incl., and 64-79, incl.

Both of the foregoing questions being decided by the Circuit Court of Appeals adversely to petitioners and their bill dismissed (125 Fed. Rep., 657), such decision is therefore final. But it is urged by petitioners that their rights have been invaded under the Fourteenth Amendment to the Constitution of the United States and, notwithstanding the existence of the foregoing statute of March 3, 1891, they have a right to a review by this Court. *Pullman's Car Co.* vs. *Transportation Co., 171 U. S., 138,* and reliance is had for the right to this writ on the case of *Loeb* vs. *Columbia Township Trustees, 179 U. S., 472,* which latter case decides "if a claim is made in the Circuit Court that the State law is invalid under the Constitution of the United States this Court may review the judgment *at the instance of the unsuccessful party.*"

This, however, was a case in which there was an appeal direct to this Court from the Circuit Court, and the Court was considering the construction and effect of the 5th section of the Judiciary Act of March 3d, 1891.

In this case the suit was brought originally in the Circuit Court of the United States for the District of Washington, Northern Division, for the purpose of setting aside a decree of the Probate Court in that State admitting to probate a nuncupative will made by one John Sullivan, and for the purpose of having said will declared void and the Court restrained from making distribution of the estate. The petitioners averred themselves to be British subjects and the respondents citizens of the State of Washington. A decision favorable to the petitioners was rendered by the Circuit Court, from which an appeal was taken to the Court of Appeals for the Ninth Circuit. This Court reversed the decision of the Circuit Court and the case is now here on appeal, for the dismissal of which a motion is now pending, and a motion is submitted by appellants for a writ of certiorari.

It is respectfully submitted this writ ought not to be allowed. First, because it is clearly apparent from the record that the Circuit Court of the United States had no jurisdiction of the case; could not have jurisdiction of the subject-matter from the fact that the probate of wills and the contest between different claimants, both as to the validity of the will and the rights of the heirs, respectively, are subjects wholly within the exclusive jurisdiction of the State Court, and the proceedings are not subject to review in a Federal Court. It is conceded by us that such a review might be had as to the proceedings of Probate Court in *some* of the States, but this is not true in respect to proceedings of that character in the State of Washington. It is submitted that in a State where the

law does not provide for the contest of a will by the Probate Court during the proceedings concerning the probate, but does provide a remedy after probate by a subsequent suit in equity, that then in such a case the Federal Court can have jurisdiction co-ordinate with the State Court, but where, as in the State of Washington, the statutes provide for the hearing and deciding of contests as to the will and rights of heirs, respectively, during probate proceedings, that then the jurisdiction is *exclusive* in State Court, and the Federal Court can not take cognizance.

AUTHORITIES.

THERE IS NO CONFLICT.

By a cursory glance at the authorities one might readily conclude they are in conflict. A very careful examination, however, will show that while there are two classes of cases in reference to proceedings in connection with the contest of a will, there is really no conflict of authorities upon the subject of the jurisdiction of the respective Courts. There is a very clear distinction recognized by the Courts, and running all through the authorities, as to the kind of cases, the jurisdiction of which would be entertained by the Federal Courts.

The distinction between the cases where the Federal Courts have, and have not jurisdiction, is this: If by the laws of the State there is no authority to warrant a contest as to the validity of a will at the time of the probate proceedings, but authority is given by statute to anyone interested in the estate to attack the will by an

independent suit, at any time after its probate, then in the case of diverse citizenship the Federal Court would have jurisdiction. Such was the case, for instance, on which the petitioners mainly rely, that of Richardson, *et al vs.* Greene, *et al*, 61 Federal, 423.

If, however, by the constitution and laws of a State full and complete jurisdiction of all matters of probate, including all contests relating to the validity of wills, is conferred upon the Probate Court of the State, then that jurisdiction is exclusive, and under no circumstances will the Circuit Court of the United States take jurisdiction. We confidently submit that this is the test recognized by the Courts, and the one clearly and properly recognized by the Circuit Court of Appeals in this case.

It is not our intention to go into a long citation or discussion of authorities. We have carefully examined all the authorities cited by the petitioners in the brief filed in support of this petition, and we submit a careful examination of these will sustain our contention.

> Carrau *vs.* O'Callaghan, *et al*, and authorities therein cited.

We call special attention to the citations from the constitution and laws of the State of Washington, set out at length in the opinion of Judge Ross, of the Circuit Court of Appeals, 125 Fed. Rep., 664-665.

From these several provisions it is clearly evident, as we believe, that the Probate Courts of the State of Washington have full, complete and exclusive jurisdiction of all matters, pertaining not only to the probate of wills,

but to contests regarding the validity of wills and the rights of claimants as heirs. If we are correct in this contention and the Court should see it in the same light, of course the application for writ of certiorari must be denied, as the Court would not order a case up on certiorari if fully satisfied the Federal Court was without jurisdiction.

But there is another reason, if the Court had jurisdiction of the subject-matter under proper conditions, why the Circuit Court had no jurisdiction in this particular case; and that is because on the face of the record it clearly appears that other parties, claiming an interest in this estate as heirs, are not made parties to the suit; they were *indispensible* parties; and it is further clearly evident that if they had been made parties the jurisdiction of the Court would have been ousted.

The record shows that Eugene T. Sullivan is on record claiming to be an heir of, and interested in, the estate, as are also several others. The record shows that he was at the beginning of this suit a citizen of the State of Washington. He is in contest, therefore, with Marie Carrau, also a citizen of the State of Washington. He is not made a party to this suit, and he is a *necessary* party, and had he been made a party the jurisdiction of the Court would have been ousted.

It would be impossible that the Court in this case could proceed to a decree without affecting other persons not before the Court, and leaving the controversy in a condition that its final determination might be wholly inconsistent with equity and good conscience. This

Court said in the case of California *vs.* The Southern Pacific Co., 157 U. S., 229:

"Can the Court proceed to a decree as between the State and the Southern Pacific Company, and do complete and final justice without affecting other persons, not before the Court, or leaving the controversy in such a condition that its final termination might be wholly inconsistent with equity and good conscience."

And in this same case, *supra*, this Court held that while the City of Oakland was a *necessary* party, had it been made a party the jurisdiction of the Circuit Court would have been ousted.

Gregory *vs.* Stetson, 133 U. S., 579;
State of California *vs.* S. P. Co., 157, 229;
Carrau *vs.* O'Callaghan, 125 Fed., 657.

Due Process of Law.

The claim is made by petitioners for writ of certiorari that the State Probate Court had no jurisdiction of the parties or of the subject-matter in admitting to probate the nuncupative will, and that a distribution of the estate under the decree of the Probate Court, and which the bill in this case sought to restrain, would deprive the petitioners of their property without due process of law. But it is respectfully submitted if the Probate Court was wholly without jurisdiction then the judgment and decree of the Court is absolutely void. No decree of distribution issued in pursuance of such a decree can have any effect whatever, but is open to attack whenever and wherever its validity is relied upon.

The rights of the petitioners could not be affected by any action taken under a decree that is void for want of jurisdiction. It can not be said that property taken under and in pursuance of such a decree has been taken without due process of law; in fact, it has not been taken at all, and property distributed under such a decree can be recovered back by the petitioners by a proceeding in the State Court by showing that the decree as to the contest between claimants was without jurisdiction and void. It is submitted property taken under a void decree is not taken at all, much less taken without due process of law. An inspection of the record, however, shows clearly that the Probate Court had jurisdiction of the persons and of the subject-matter. It was not a proceeding *inter-partes* but a special proceeding in the nature of a proceeding *in rem*, and the record shows that the statutes of the State were fully complied with.

The petition for certiorari should be disallowed and the appeal should be dismissed.

W. F. Hays,
John H. Mitchell,
Attorneys for Respondents.

IN THE

Supreme Court of the United States.

October Term, 1903

HANNAH O'CALLAGHAN AND EDWARD CORCORAN, *Appellants*,

vs.

TERENCE O'BRIEN, as Administrator of the estate of JOHN SULLIVAN, deceased, and MARIE CARRAU, *Respondents.*

No. 593.

Motion to Dismiss Appeal.

Now come Terence O'Brien, as administrator of the estate of John Sullivan, deceased, and Marie Carrau, Respondents, by their attorneys, W. F. Hays and John H. Mitchell, and move this honorable court to dismiss the appeal in the above entitled suit, for the following reasons:

First.—Because the decree of the Circuit Court of Appeals from which this appeal is taken was final, for the reason that the jurisdiction, if it existed at all, depended entirely upon the opposite parties to the suit being aliens and citizens of the United States. The decree, therefore, in virtue of the provisions of section six of the Act establishing Circuit Courts of Appeals, approved March 3, 1891, is final.

Second.—Because it clearly appears from an examination of the record now before the Court that neither the Circuit Court, the Circuit Court of Appeals, nor this Court has any jurisdiction of the case.

W. F. HAYS,
JOHN H. MITCHELL,
Attorneys for Respondents.

IN THE

Supreme Court of the United States.

October Term, 1903.

HANNAH O'CALLAGHAN AND EDWARD CORCORAN, *Petitioners and Appellants,*

vs.

TERENCE O'BRIEN, as Administrater of the estate of JOHN SULLIVAN, deceased, and MARIE CARRAU, *Respondents.*

No. 593

Notice of Application to the Supreme Court to Dismiss Appeal.

To Hannah O'Callaghan and Edward Corcoran, Petitioners and Appellants, and to James B. Howe, Counsel for Petitioners, and to Samuel H. Piles, George Donworth, and Charles H. Farrell, of Counsel.

You, and each of you are hereby notified that the above named respondent, Marie Carrau, will, on Monday the 10th day of October, 1904, at twelve o'clock M., upon the coming in of the Supreme Court of the United States upon petition and copy of entire record in this case, submit to the Supreme Court of the United States in the Court Room at the Capitol in the City of Washington, District of Columbia, her motion and petition praying the Supreme Court to dismiss the appeal in the above entitled case, and for reasons fully set forth in brief submitted with motion filed in said Court.

Copies of motion and brief in support thereof are herewith delivered to you.

W. F. HAYS,
JOHN H. MITCHELL,
Counsel for Marie Carrau.

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IN THE

Supreme Court of the United States

October Term, 1903

HANNAH O'CALLIGAN AND EDWARD CORCORAN, *Appellants.*

vs.

TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED; MARIE CARRAU, W. M. RUSSELL, AND S. F. COOMBS, *Respondents.*

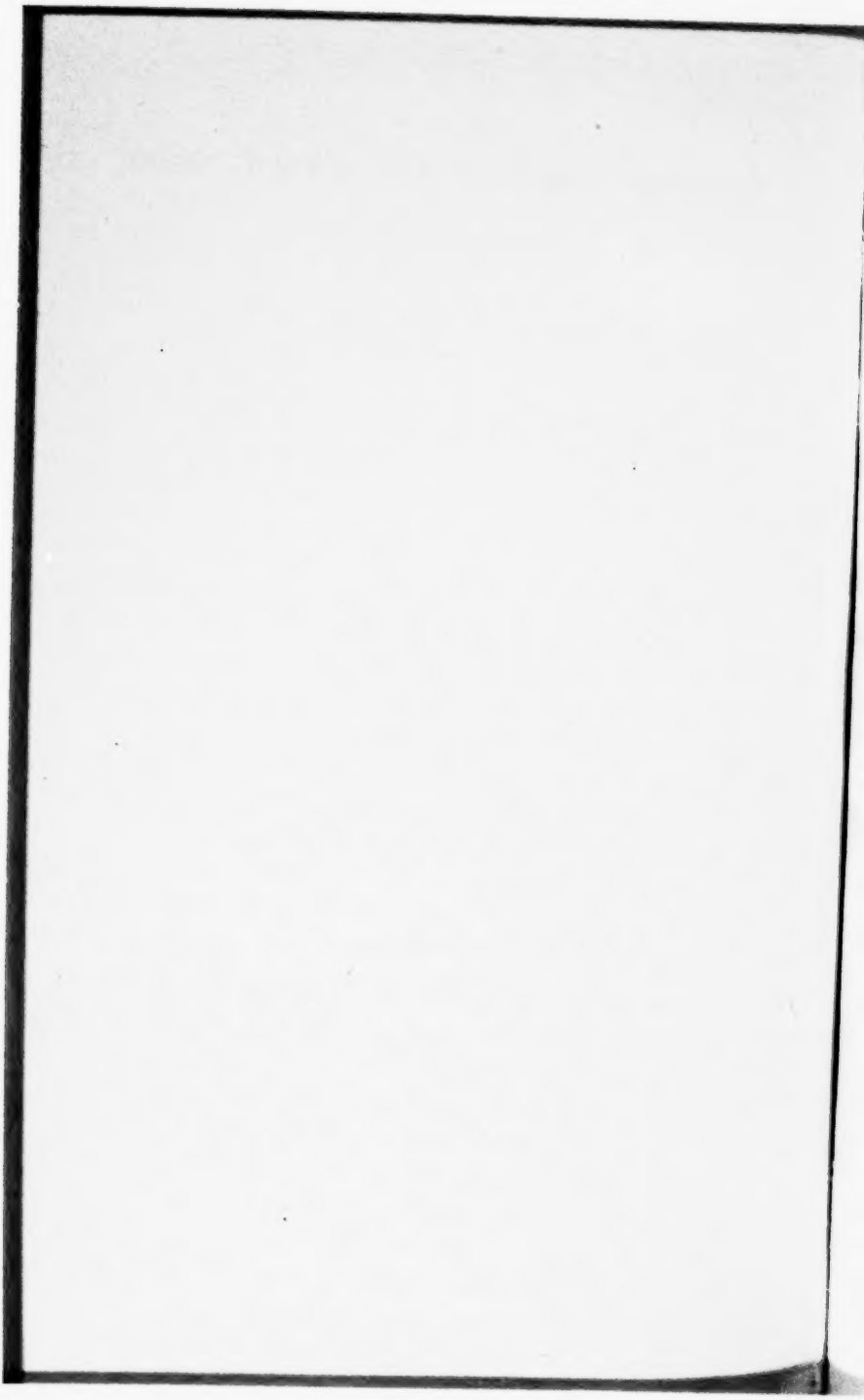
No. 193.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE NINTH CIRCUIT.

Brief of J. W. Robinson and J. P. Houser, solicitors, for respondent, Marie Carrau, in support of the motion to dismiss the appeal, and upon the merits.

J. W. ROBINSON,
OLYMPIA, WASH.
J. P. HOUSER,
MT. VERNON, WASH.
Counsel for Respondents.

RECORDER PUBLISHING COMPANY, OLYMPIA.



IN THE

Supreme Court of the United States

October Term, 1903

HANNAH O'CALLIGAN AND EDWARD CORCORAN, *Appellants.* vs. TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED; MARIE CARRAU, W. M. RUSSELL, AND S. F. COOMBS, *Respondents.*	No. 193.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE NINTH CIRCUIT.

Brief of J. W. Robinson and J. P. Houser, solicitors, for respondent, Marie Carrau, in support of the motion to dismiss the appeal, and upon the merits.

STATEMENT.

A. On September 26, 1900, John Sullivan, a bachelor, died in Seattle, Washington, seized of real and personal property of the value of more than $500,000. He was engaged to the respondent, Marie Carrau, and was to have been married to her on October 1st, 1900. The night of his death and a few hours prior thereto, he called certain persons residing in the house where he died, to his bedside and requested them to witness that he devised all his property both real and personal, worth many thousands of dollars, to Marie Carrau. Those in attend-

ance upon him at that time did not consider that he was seriously ill, but early next morning he died and the following morning, Marie Carrau requested her spiritual advisor, Father Sweere, a Catholic priest, to learn for her whether or not an oral will was of any value, which he did and in a few days informed her that an oral will in the state of Washington, was not valid. The deceased left no immediate relatives, if he left any. Shortly after his death a special administrator was appointed upon the petition of creditors in the probate department of the superior court of King county, Washington, which was the county in which the deceased had resided for many years and wherein was situate his proporty. Thereafter on November 19, 1900, the respondent, O'Brien, was appointed administrator, his bond fixed at $80,000, and immediately thereafter he qualified and has been in possession of the assets of said estate ever since and said estate has been ever since and is now being administered in the probate department of said state court. Believing that the oral will was void as told her by Father Sweere, Marie Carrau joined in asking for the appointment of an administrator, but in about four months there after, she learned through the wife of a practicing attorney to whom she was teaching French, that an oral will *was valid* in the state of Washington, and within a few days after securing this information, to-wit, on March 8, 1901, she caused this nuncupative will to be probated in the probate department of the superior court of King county, Washington, and such decree is in words and figures as follows:

"In the Superior Court of the State of Washington, for King County. In Probate.
"In the Matter of the Estate of John Sullivan, Deceased.

No. —

DECREE ADMITTING WILL TO PROBATE.

Marie Carrau having on the 8th day of March, 1901, in person and by her attorneys, Messrs. Hays, Houser, and Pratt & Riddle, submitted to and filed in this court a certain document in writing of a testamentary nature, being the words and the substance thereof spoken by the deceased, John Sullivan, purporting to be the last will and testament of the said John Sullivan, deceased, to-wit, a nuncupative will, and also her petition praying among other things for the admission to probate of the said document as and for the last will and testament of the said deceased.

And this court having duly ordered a citation to issue to the widow or next of kin of the deceased, and said citation having been issued, and by the sheriff of King county, Washington, duly made return thereof, by which return it appears that there is no widow or next of kin of the said deceased, John Sullivan.

Now on this the 8th day of March, 1901, the hearing of the said petition comes on regularly before the court in open session;

And it fully appearing to the satisfaction of the court that the said petition sets forth all the facts necessary to give this court jurisdiction over the estate of the said deceased and jurisdiction to admit to probate the last will and testament of the said deceased, and witnesses having been examined under oath and their testimony taken and reduced to writing in open court, to-wit, the testimony of Louis Daussat, Augustine Daus-Hermance Carrau, and Marie Carrau, the petitioner, all said witnesses being over the age of 21 years at the time of the speaking of the words constituting said nuncupative will set forth in the petition herein, and the same having been filed and the evidence being closed, and the matter having been duly and regularly and finally submitted to the court for consideration and decision, and all and singular the law and the premises being now by the court here fully understood and duly considered, the court finds the facts applicable to this matter to be as follows: That the said John Sullivan died

testate on the 26th day of September, 1900, at No. 1413 Seventh avenue, Seattle, Washington;

That at the time of his death the said deceased was a resident and had been for a period of more than 10 days in said house as his dwelling house imediately preceding the date of his said death and left estate in said King county subject to administration in the state of Washington;

That the said document purporting to be the last will and testament of said John Sullivan, deceased, was duly executed by him in his life time, to-wit, on the 25th day of September, 1900, at about the hour of 11 o'clock p. m. of said day, and during his last illness, and from which his death ensued, in the presence and hearing of the said Louis Daussat, Augustine Daussat, Hermance Carrau, and Marie Carrau, the petitioner, all said competent persons to witness the making of said will and the words by the deceased then and there spoken, and which words were afterwards reduced to writing by the said witnesses, and by them duly subscribed, and also that the said deceased then and there, in the presence of the said witnesses published the said document and will as, and declared the same to the said witnesses to be his last will and testament, which was by said witnesses duly attested and signed by each of them on the following day after the speaking of said words, and the pronouncing of the same, or to that effect; and that the said deceased did bid said witnesses then present to bear witness that such was his last will;

That said will was made at the time of the last sickness, and where he had been residing for the space of more than 10 days previous to the pronouncing thereof;

That the said deceased at the time of executing the said last will and testament was over the age of majority, to-wit, of the age of about 60 years, and was of sound and disposing mind and memory, and not acting under duress, menace, fraud, nor any undue influence whatsoever, nor in any respect was he incompetent by last will to devise and bequeath his estate;

That Marie Carrau is named in the said will as the sole legatee thereof, and of the entire estate of the deceased, John Sullivan, by the terms of said will;

Now, therefore, by reason of the law and facts aforesaid, it is considered, ordered, adjudged and decreed by the court here, that the jurisriction to admit to probate the last will and testament of the said deceased, appertains unto our said superior court; that the said document submitted for probate on the 8th day of March, 1901, is the last will and testament

of the said John Sullivan, deceased, and that the same was properly and legally executed, and is entitled to be, and is, hereby admitted to probate;

That a certificate of probate thereof be granted, and that the said last will and testament, together with said certificate be duly entered of record in the records of wills in this court, as provided by law.

Done in open court this 8th day of March, 1901.

BOYD J. TALLMAN,
Judge of said Superior Court of King County, State of Washington.

Filed March 8, 1901.

C. A. KOEPELI,
Clerk.

B. On June 20, 1901, these appellants, as British subjects, filed a bill in equity against Marie Carrau, as legatee under said will and Terence O'Brien, as administrator of said estate, in the United States circuit court of the district of Washington. The purpose of the bill was to contest the will so probated and revoke the probate thereof, and in addition to the allegation of adverse citizenship, the bill alleged that the will was secured and probated by fraud, and that the probate court had not issued proper citation, and hence had no jurisdiction to probate the will. The administrator appeared and disclaimed any interest in the estate other than as an administrator appointed by the state court. Marie Carrau appeared by her solicitors and at every stage of the proceedings objected to the jurisdiction of the federal court principally upon two grounds:

First. Because the circuit court had no jurisdiction of the 'subject matter," and,

Second. Because it appeared upon the face of the pleadings that if all the "necessary" parties were before the court, such court would be ousted of its jurisdiction, it appearing upon the face of the pleadings that Eugene T. Sullivan, claim-

ing to be an heir of the deceased, was a citizen and resident of the state of Washington, and claiming in opposition to Marie Carrau, as the legatee.

The circuit court held that it had jurisdiction, and after trial, entered a decree against Marie Carrau, cancelling the will and revoking the decree in the state court, probating the same.

From this decree, Marie Carrau appealed to the United State circuit court of appeals for the Ninth circuit, and the court reversed the circuit court, for the reason that the circuit court was without jurisdiction of the subject matter of the suit, and further, because of the fact that all the necessary parties were not before the court, who if made parties would have ousted the court of jurisdiction, and directed the circuit court to dismiss the bill.

See *Carrau v. O'Callaghan, et al.*, 125 Fed., 657.

(See Transcript, pages 543, 544 and 545.)

C. On June 20, 1901, the same date on which these appellants, as British subjects (and as they claimed a few minutes after filing the bill in equity in the federal court), filed a petition in contest in the probate department of the superior court of the state of Washington for King county, In re estate of John Sullivan, deceased, in and by which they sought to contest said will and to cancel and set aside the decree probating the same on March 8, 1901, in which petition in contest they gave notice of the filing of said bill in equity in the federal court.

D. In April, 1902, more than one year after the date when the nuncupative will had been probated, on motion of the attorneys for Marie Carrau, who had appeared specially in that proceeding, the state court entered an order striking appellants' petition in contest from the files, and on April 18, 1902, these

appellants filed therein another petition in contest, but as to this second petition in contest no citation was issued, and thereafter the attorneys for Marie Carrau filed a motion in the state court to dismiss the second petition in contest for want of jurisdiction in the court to entertain it after the expiration of one year from the date of the decree probating the will.

E. In March, 1904, the attorneys for Marie Carrau moved to dismiss the second petition in contest in the state court for want of prosecution and also noticed for hearing, that motion and the former motion to dismiss for want of jurisdiction and on January 6th, 1905, the state court dismissed the appellants' petition in contest of this will, for failure to prosecute and also because the petition having been filed after the expiration of the one year in which, under the statute a contest might be maintained, the court had no jurisdiction, and entered a decree dismissing the petition in contest and gave judgment against these appellants for costs, and the correctness of that judgment of dismissal is now pending in the supreme court of the state of Washington, on appeal.

F. The petition in contest in the state court by Eugene Timothy Sullivan, also a citizen of the state of Washington, against Terence O'Brien, as administrator, and Marie Carrau, the legatee under the will, is still pending undetermined in the state court, in which Sullivan claims in such proceeding, that he and his sister are the only heirs of John Sullivan, deceased, being his first and only cousins, and the contests of all other claimants are still pending in the state court undetermined.

G. And the decision of the United States circuit court of appeals, for the Ninth circuit, reversing the circuit court, and directing the dismissal of the bill in equity for want of jurisdiction, is before this Honorable Court on appeal and there is also pending before this Honorable Court the petition of these

appellants for a writ of certiorari and reference is hereby made to the printed brief of these solicitors for Marie Carrau, in opposition to that petition.

II. There is also pending here, a motion to dismiss this appeal because the decision of the circuit court of appeals was final under section 6 of the act of congress, creating the circuit court of appeals, approved March 3, 1891.

IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1903.

HANNAH O'CALLIGAN AND EDWARD CORCORAN, *Appellants.*

vs.

TERENCE O'BRIEN, AS ADMINISTRATOR OF THE ESTATE OF JOHN SULLIVAN, DECEASED; MARIE CARRAU, W. M. RUSSELL, AND S. F. COOMBS,

Respondents.

MOTION TO DISMISS APPEAL.

Comes now, Marie Carrau, by her solicitors, J. W. Robinson, and J. P. Houser, and moves this Honorable Court to dismiss this appeal because the decree of the circuit court of appeals of the Ninth district, from which this appeal is prosecuted, was final under the provisions of section 6 of an act of congress creating the circuit court of appeals, approved March 3, 1891, with the amendments thereto.

J. W. ROBINSON and
J. P. HOUSER,
Solicitors for Marie Carrau, Respondent.

ON MOTION TO DISMISS.

First. On the motion to dismiss, there is but one question. We *insist that the bill in equity* (See Transcript, pages 4 to 11, inclusive) *invoked the jurisdiction of the circuit court, solely upon the ground of diversity of citizenship*, and hence the decree of the circuit court of appeals was final.

These appellants filed this bill in equity on June 20, 1901, in the circuit court of the United States, for the district of Washington, against the respondents, Terence O'Brien, as

administrator, and Marie Carran, the legatee under the will probated by the state court. The complainants were Hannah O'Callaghan and Edward Corcoran, claiming to be subjects of the Kingdom of Great Britain, and the only first cousins of deceased. The sole purpose of the bill in equity was to contest the nuncupative will probated in the state court and the principal relief sought was to have the decree probating the will cancelled for the alleged reason, that the state court had no jurisdiction to probate the will, because it had not issued process to secure jurisdiction of the parties. In other words, the purpose of the bill was to contest the will and to review and set aside the decree of the state court, probating the will, for want of jurisdiction, and jurisdiction was invoked because of the diversity of citizenship and upon no other ground. The prayer of the bill is for a decree adjudging the pretended nuncupative will null and void, and among other things, that the complainants (appellants here) be decreed to be the only heirs at law of the deceased Sullivan, and entitled to receive the whole of his estate and that the defendant, Terence O'Brien, as administrator of the estate, be enjoined from turning over any of the property to the respondent, Marie Carran, or to any other person or persons than the complainants.

The answer of Marie Carran in the circuit court, denied the relationship of these appellants to the deceased Sullivan. Her answer also put in issue, all the allegations of the bill, in respect to fraud and conspiracy, and among other things, she sets up in her answer, that she was engaged to the deceased and was to have been married to him on Oct. 1, 1900. That Sullivan did make and publish the nuncupative will probated on March 8, 1901, by the probate court of King county, Washington, by which he devised to her, all of his property. That immediately after the death of Sullivan, she informed

Father Sweere, a Catholic priest and her spiritual advisor, that Sullivan did make and publish the oral will and that she never atempted to conceal that fact but on the contrary, she caused a regular practicing attorney in Seattle, to be consulted as to the validity of an oral will, by whom she was informed that such will was not valid in the state of Washington, and that it was many weeks thereafter before she learned that such a will was good and she then promptly had the will probated.

She denies that the superior court of King county probating the will, acted without jurisdiction, but on the contrary, alleges that said court had the exclusive jurisdiction. Her answer also sets up the facts of the lack of jurisdiction in the circuit court, over the subject matter of the suit and then sets forth the statute, which is as follows:

"No nuncupative will shall be good when the estate bequeathed exceeds the value of two hundred dollars, unless the same be proved by two witnesses who were present at the making thereof, and it be proven that the testator at the time of pronouncing the same did bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness and at the dwelling house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return."

Ballinger's Code of Washington, volume 1, section 4605.)

Her answer also sets forth the claims to heirship and to said estate, of the various persons claiming to be the sole heirs and entitled to inherit the whole of the estate of the deceased, among which claimants, was Eugene Timothy Sullivan, on his own behalf and that of his sister, who were each citizens and actual residents of the state of Washington.

The answer also set up that these appellants filed a verified

petition in contest and appeared by Piles, Donworth & Howe, and C. H. Farrell, their attorneys, who were also complainants' solicitors and are the attorneys here for appellants, by which they sought to contest the nuncupative will and that they filed such petition in contest in the superior court of King county, Washington, "In re Estate of John Sullivan, deceased," in which Hannah Callaghan (mentioned herein as O'Callaghan) and Edward Corcoran were petitioners and Terence O'Brien, as administrator, and Marie Carrau, as legatee, were respondents. And that they caused citation therein, under seal of the superior court of King county, Washington, to be issued and which was served upon the respondents.

The answer also alleged that a large number of these claimants had filed petitions in the probate court and caused citations to be issued and served and that all such contests are still pending in the state court, undetermined, and that Marie Carrau was contesting these petitions and defending her rights under said will against all of these claimants who were seeking the same kind of relief as these appellants.

The complainants (appellants here) filed a replication to the answer of Marie Carrau, but no issue was taken as to the allegations with reference to the various claimants and the filing of their contests in the state court, nor did said reply deny that Eugene Timothy Sullivan, a claimant, contesting said nuncupative will, was then and had been for many years, a citizen and resident of the state of Washington.

So it was conceded that upon the face of the pleadings, it appeared that Eugene Timothy Sullivan, was a claimant contesting said nuncupative will, against Marie Carrau, and that he and his sister claimed to be the sole heirs of the deceased Sullivan, and that they were citizens of the state of Washington, and claiming adverse to Marie Carrau.

And these conceded facts ousted that court of its jurisdiction, and coming to the attention of the circuit court, the bill should have been dismissed accordingly.

Second. Certainly there is nothing in the bill which by any process of reasoning calls for a construction of any act of congress. The constitution and laws of the state of Washington, involved in this action are not claimed to be in contravention to the constitution of the United States. All that is claimed and all that can be claimed for this bill, is that the state court failed to issue process to secure jurisdiction of the persons claiming to be interested in the estate, and therefore acted wholly without jurisdiction, but the facts of the bill show that the state court had jurisdiction to enter a decree probating the will. That the probate court had been administering this estate for many months prior to the filing of this bill, and these appellants allege that by reason of the administration of said estate, they feared the assets thereof would be distributed to Marie Carran as a legatee under this will, and they would thus be deprived of the property "*without due process of law*," and by this contention, they seek to avoid section 6 of the act creating circuit courts of appeals, making its judgments final when jurisdiction depends entirely upon diversity of citizenship. But "due process of law" has no such meaning as they attempt to give it. The allegations in the bill, to the effect that the probate court proceeded without jurisdiction, is a mere conclusion but the answer specifically denies these allegations and sets up the facts showing that the superior court had jurisdiction and found in its decree, all the facts affirmatively necessary to give the probate court jurisdiction to probate the will.

Appellants have continuously claimed that the proceeding to probate the will, was a proceeding inter-partes, but we in-

sist that this is not debatable grounds. The probate court already had and had had for many months, jurisdiction of the subject matter, as well as all persons having any interest in the estate, and the application to have the will probated, was a special proceeding in the nature of a proceeding *in rem*.

We now desire to call the Court's attention to the pleadings in the circuit court, to-wit:

A. The Bill in Equity. (Transcript, pages 4 to 11 inclusive.)

B. Objection to Jurisdiction by Marie Carrau, (Transcript, pages 16 and 17).

C. Marie Carrau's Plea in Abatement, (Transcript, pages 19, 20 and 21).

D. Answer of Marie Carrau, (Transcript, pages 36 to 43, inclusive).

E. Opinion and Decree of Circuit Judge Hanford, (Transcript, pages 121 to 133, inclusive).

F. Opinion of Circuit Court of Appeals, (Transcript, pages 826 to 845, inclusive).

Among the cases in which the judgments or decrees of the circuit court of appeals are made final, are those in which the jurisdiction of the circuit court,

"Is dependant entirely upon the opposite parties to the suit, or controversy, being aliens and citizens of the United States or citizens of different states." Section 6, 26 Stat., page 828.

And,

"In all cases not hereinbefore in this section made final, there shall be of right, an appeal or writ of error or review of the case by the Supreme Court of the United States, when the matter in controversy shall exceed $1,000."

So it will be seen that upon this motion to dismiss, appellants must make it appear to this Honorable Court, that the jurisdiction was not dependant entirely upon the opposite parties, being citizens of different states, and it must appear from the record, that this case is one of which the circuit court could

take cognizance independently of the citizenship of the real parties in interest.

Wherein was jurisdiction invoked upon federal grounds? Eliminate diversity of citizenship and you have nothing left. Nothing can be ponted out in this bill, which will rightfully invoke the jurisdiction of the federal courts, and this appeal should be dismissed.

Rouse vs. Letcher, 156 U. S., 47.

Huguely M. Co. vs. Galeton Cotton Mills, 184 U. S., 290.

In the last above cited case, on page 295, this Honorable Court used the following language:

"If, after the jurisdicton of the circuit court attaches on the ground of diversity of citizenship, issues are raised, the decision of which brings the case within either of the classes set forth in section 5, then the case may be brought directly to this court, although it may be carried to the circuit court of appeals, in which event the final judgment of that court could not be brought here as of right.

Lobe vs. Columbia Trustee, 179 U. S., 472.

"If the jurisdiction of the circuit court rests solely on the ground that the suit arises under the constitution, laws or treaties of the United States, then the jurisdicton of this court is exclusive, but if it is placed on diverse citizenship and also on grounds independent of that, then if carried to the court of appeals, the decision of that court would not be made final, and appeal or writ of error would lie."

American Sugar Co. vs. New Orleans, 181 U. S., 277.

Howard vs. U. S., 184 U. S., 676.

Northern Pacific vs. Soterberg, 188 U. S., 526.

Robinson vs. Caldwell, 165 U. S., 359.

Florida Central R. R. Co. vs. Bell, 176 U. S., 321.

The appeal from Circuit Judge Hanford's decision, was upon the merits, and as we understand the law, we had the right to appeal direct to the Supreme Court of the United States on the question of jursdiction alone, but we also had the

right to appeal to the circuit court of appeals on the merits, and there have reviewed all questions arising in the circuit court. The circuit court of appeals passed upon the question of jurisdiction and having reached the conclusion that the circuit court had no jurisdiction of the subject matter, and also that if the circuit court had jurisdiction of the subject matter, all the necessary parties were not before the court, who if made parties would oust the court of jurisdicton, upon the grounds of citizenship, and for both reasons, reversed the lower court and directed the dismissal of the bill.

The contention that the circuit court of appeals had no jurisdiction to review the decision of Circuit Judge Hanford, is raised for the first time in the Supreme Court of the United States. The jurisdiction of the circuit court of appeals was not questioned, neither in the briefs nor arguments before that court, nor was it suggested or raised in the petition for rehearing.

The circut court of appeals having held that the circuit court had no jurisdiction, it rightfully refused to pass upon the merits.

It is probably not strange that we are unable to fully understand the position of the solicitors for the appellants with reference to the claim made, that the circut court of appeals had no jurisdiction to review the decision of the circuit court. The circuit court held that it had jurisdiction of the subject matter and that the other claimants to the estate were not necessary parties, and entered a decree against us upon the merits, and it was necessary for us to appeal to that court in which we could not only have the question of jurisdiction reviewed, but the decree upon the merits. The circuit court passed upon the question of jurisdiction of the state court to probate the will, holding that the state court had no such jurisdiction and cancelled and revoked the decree probating the will, and held that the words constituting the nuncupative will

were never spoken, and yet these facts were testified to by four witnesses, and there was not a syllable of evidence to dispute these facts or which tended to contradict these witnesses, nor was there any attempt whatever made to discredit the evidence of or impeach the witnesses, and based upon this finding the circuit court enjoined Marie Carrau and her representatives from ever claiming any rights by reason of said nuncupative will or the decree probating the same, and hence the necessity for having the case revewed on its merits. We certainly had the right to have this case reviewed upon its merits as well as upon the question of jurisdiction.

How it can be successfully contended in one breath, that the Supreme Court has jurisdiction to review the decision of the circuit court of appeals, and in the next breath, that the circuit court of appeals had no jurisdiction, is beyond our comprehension. Had the circuit court of appeals sustained the jurisdiction of the circuit court, that court would then have passed upon the merits, and the contention made by the solicitors for the appellants, seems to us to mean that we would be compelled to take two appeals, one to the circuit court of appeals on the merits and one to the Supreme Court on the question of jurisdiction, and this is clearly contrary to the act relating to appeals and as shown by the authorites cited by appellants in their brief, on the motion to dismiss this appeal.

We submit with confidence, that the decree of the United States circuit court of appeals, in reversing Circuit Judge Hanford, was final and cannot be reviewed in this court and we cite the following decisions, which sustains our contentions in this particular, and that the appeal should be dismissed.

Sec. 6, Act March 3, 1901, Vol. 1, Supplement Revised Statutes, page 903.

Rule 8 of the Supreme Court.

Carrau vs. O'Callaghan, 125 Fed., 657.

United States vs. Taylor, 147 U. S., 695.

Loeb vs. Columbia Township Trustees, 179 U. S., 483.
Ayres vs. Polsdorfer, 187 U. S., 589.

J. W. Robinson and
J. P. Houser,
Solicitors for Marie Carrau.

BRIEF ON THE MERITS.

No Jurisdiction of Subject Matter.

1. The United States circuit court of appeals in rendering its decision, reviewing the decision of the circuit court of the district of Washington, after stating the facts of the pleadings, said:

"We are of the opinion, that the court below was without jurisdiction of the subject matter of the suit and further that all necessary parties were not before the court, some of whom if made parties would have ousted the court of jurisdiction. On both of these grounds we think the court below should have dismissed the bill at the complainants' cost."

2. The conclusions reached by the circuit court of appeals, to the effect that the circuit court was without jurisdiction of the subject matter of the suit was based upon the constitution and statutes of Washington. (See Opinion of Circuit Court of Appeals, beginning on page 834 of the Transcript.)

Section 6 of article IV of Washington's state constitution, clothed the superior courts of the state with original jurisdiction,

"Of all matters of probate," as well as of all cases in equity and of all cases at law not specially excepted.

The state statutes provide that,

"The superior courts in the exercise of their jurisdiction in matters of probate, shall have power;

1—To take proof of wills and to grant letters testamentary and of administration * * *,

2—To settle the estates of deceased persons and the accounts of executors, administrators and guardians,

3—To allow or reject claims against the estate of deceased persons as hereinafter provided, * * *.

5—To award process and cause to come before them all persons whom they may deem it necessary to summon, whether parties or witnesses or who, as executors, administrators, or guardians or otherwise, shall be intrusted with or in any way accountable for any property belonging to any minor, orphan, or person of unsound mind or estate of any deceased person.

6—To order and cause to be issued all writs which may be necessary to the exercise of their jurisdiction." Hill's Annotated Statutes and Codes of Washington, Vol. 2, Sec. 845.

By section 851 of the same statute, it is provided that:

"Wills shall be proved and letters testamentary or of administration shall be granted;

1—In the county of which deceased was a resident or had his place of abode at the time of his death;

2—In the county in which he may have died, leaving estate therein and not being a resident of the state.

3—In the county in which any part of his estate may be, he having died out of the state, and not having been a resident thereof at the time of his death."

Various provisions follow concerning the production of and petition for the probate of wills, and among them section 861, which provides that;

"Applications for the probate of a will or for letters testamentary, may be made to the judge of the superior court and he may also at any time issue all necessary orders and process to enforce the production of any will."

By section 862 of the same statutes it is provided that;

"When any will is exhibited to be proven the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, issue a certificate of rejection."

Section 867 is as follows:

"All the testimony adduced in support of the will shall be reduced to writing, signed by the witnesses and certified by the judge of the court;" and the next section provides recordation in a book to be kept for that purpose, of all wills admitted to probate.

Section 872 of the same statute is as follows:

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction, contest the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will or to the rejection thereof. Issues shall be made up, tried, and determined in said court respecting the competency of the deceased to make a last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will."

The next section—873—provides that;

"Upon the filing of the petition referred to in the next preceding section a citation shall be issued to the executors who have taken upon them the execution of the will or to the administrator with the will annexed, and to all legatees named in the will residing in the state or to their guardians if any of them are minors or to their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted."

By section 874 it is declared that;

"If no person shall appear within the time aforesaid the probate or rejection of such will shall be binding, save—to infants, married women, persons absent from the United States or of unsound mind, a period of one year after their respective disabilities are removed."

By section 876 it is provided that;

"If, upon the trial of said issue, it shall be decided that the will is for any reason invalid or that it is not sufficiently proved to have been the last will of the testator, the will and the probate thereof shall be annulled and revoked."

3. So it will be seen that the Washington statute makes

express provisions for a contest of any will admitted to probate for any cause affecting the validity of the will, but that this must be done by petition to the superior court, having jurisdiction and administering such estate and the supreme court of Washington so held in the case of

The State ex rel. Stratton, Attorney General, vs. Tallman, Judge, 25 Wash., 295.

who was the judge of the superior court in the state of Washington, administering the Sullivan estate, and the case of

State ex rel. Stratton, Tallman, Judge, reported in 29 Wash., 317.

It will thus be seen that the supreme court of the state of Washington gave to these statutes the same meaning and construction given them by the United States circuit court of appeals. And speaking of the last decision from the supreme court of the state of Washington, 29 Wash., 317, the circuit court of appeals said:

"Here again, the supreme court of Washington clearly indicates that the proper court under the statutes of the state, in which to contest the validity of the will in question, is that department of the superior court exercising probate jurisdiction, and having control of the estate in question."

And your Honors will understand that these two cases by the attorney general, were each the result of the attorney general attempting on behalf of the state, to contest this will of John Sullivan, deceased, so as aforesaid probated, upon the theory that there were no heirs or next of kin and with this will eliminated, the assets of this estate would escheat to the state of Washington.

The circuit court of appeals also quoted with approval, from the case of

In re Alfsted's estate, 27 Wash., 175,

as follows:

"The powers of the superior court in respect to its probate jurisdiction, are the same as they would be if it were in fact a separate probate court. Proceedings in probate matters; in actions in equity and at common law, are distinct, and should not be intermingled except in cases specially authorized by law."

As bearing upon this point the supreme court of the state of Washington, in the case of

Filley vs. Murphy, 30 Wash., 1, on page 5,

used this language:

"In this state, we have no probate court properly speaking, as distinguished from the court that entertains jurisdiction of other matters. The court of general jurisdiction also hears and determines probate matters. Matters pertaining to probate are referred to what is called "probate proceedure," *as distinguished from what is denominated civil or criminal proceedure.*"

Your Honors will not overlook the fact that the superior court of King county, Washington, in the probate department thereof, acquired jurisdiction of the estate of John Sullivan, deceased, in November, 1900, and that such court continued to administer upon said estate and was administering upon said estate at the date when this bill in equity was filed in the United States circuit court for the district of Washington, and these appellants recognizing the jurisdiction of the state court, on the same day they filed their bill in equity in the federal court, filed a petition in contest in the probate court, In re estate of John Sullivan, deceased, contesting the will for the same reasons and seeking the same relief set forth and prayed for in the bill in equity in the circuit court.

(See Transcript, page 546.)

And in speaking of the character of such a proceeding, the United States circuit court of appeals in its opinion in

Carran vs. O'Callaghan, et al., 125 Fed., 657,

says:

"A petition to probate a will, is the beginning of a special proceeding, and that the order admitting the will to probate is not final so long as the proceedings may be taken (under the statute) to revoke the probate. In all subsequent stages, the contest is but a part of the proceeding to probate the will and is not a new or distinct proceeding. The subject matter is the same and the ultimate issue, to-wit, whether the will in question should stand as probated, is the same."

Under the laws of Washington, that department of the superior court having probate jurisdiction is vested with the sole jurisdiction over every question involved in this case. In the exercise of the powers with which the constitution clothes the superior courts and under the statue, it must determine all questions relating to the distribution of estates, pass upon the validity of wills, the question of heirship, fraud or any other question affecting the validity of the will and that forum affords an exclusive, complete, efficient, prompt and adequate remedy for these appellants, and they submitted themselves to that jurisdiction by filing a petition in contest in the state court "In re estate of John Sullivan, deceased," on the same day they filed the bill in equity in the federal court, but for reasons known only to themselves, they failed to prosecute the contest of this will in the state court and finally on January 6, 1905, their petition in contest was dismissed in the state court.

The right to contest is found in the following section:

SECTION 6110. CONTEST OF WILL.

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and, by petition to the superior court having jurisdiction, contests the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such

last will and testament under restraint or undue influence or fraudulent representation, or for any other cause affecting the validity of such will." (Bal. Code Wash., sec. 6110; Hill's Code, sec. 876.)

This section 6110 and sections 6347 to 6377, of Vol. 2 of Ballinger's Code of Washington, authorizes the trial and determination in the probate department of the state court, of all questions of heirship, as well as the right to take under wills, and such a contest necessarily requires that court to determine the question of kinship as an issue incident to the right to contest the will and the superior court of the state of Washington, in construing these statutes have uniformly held this to be the law, and that the probate department has the sole and exclusive jurisdiction so to do, as will appear from an examination of the following citations:

Webster vs. Seattle Trust Co., 7 Wash., 651.
Griffin vs. Warburton, 23 Wash., 231.
State ex rel. Stratton vs. Tallman, 25 Wash., 295.
In re Alfred's Estate, 27 Wash., 175.
State ex rel. Stratton vs. Tallman, 29 Wash., 317.
Browder vs. Finney, 30 Wash., 74.
Filley vs. Murphy, 30 Wash., 1.
In re Murphy's Estate, 30 Wash., 9.
Reformed Presbyterian Church vs. McMillan, 31 Wash., 643.

4. The federal courts have never assumed to exercise jurisdiction over probate matters, though in the examination of certain decisions in the various federal courts throughout the United States, in certain instances it might seem that they had, but a careful examination of each of such cases, will, we think, show to the Court that it was owing to some peculiar statute in the one class of cases and in the other a clear mis-

apprehension of what had been decided in certain other cases, and we cite the following:

Bedford Quarries Co. vs. Thomlinson, 95 Fed., 208.
Walker vs. Brown, 63 Fed., 204.
Wahl vs. Brown, 63 Fed., 680.
In re Cilley, 58 Fed., 977, 982, 984 and 989.
Ellis vs. Davis, 109 U. S., 485.
Simmons vs. Saul, 138 U. S., 430.
Broderick's Will, 21 Wall., 503.
Reed vs. Reed, 31 Fed., 53.
In re Aspinwall's Estate, 83 Fed., 952.
Oakley vs. Oakley, 64 Fed., 246.
Blythe vs. Hinckley, 84 Fed., 250.
Wahl vs. Franz, 100 Fed., 680.

We particularly desire to call the Court's attention to the last case above cited in the 100 Fed., which was an action to revoke the probate of a will and cancel the will itself on the ground of fraud, etc., and in certain particulars the case strongly resembles the case at bar, and it was held by the circuit court of appeals, that the probate court had the exclusive jurisdiction to grant this relief and that no jurisdiction existed in the federal courts, and also that such an action was neither a "suit of *civil nature at law or in equity*," within the meaning of the Federal Judiciary Act. We believe this to have been a very well considered case and becomes useful in view of the fact that the question of apparent conflict of authority as to the jurisdiction of the federal courts, is fully and carefully discussed and the authorities pro and con cited, considered and discussed both in the majority opinion and in the dissenting opinion of Judge Sanborn.

5. We also desire to call the Court's attention to the fact that under the laws of the state of Washington, a will may

be probated ex parte, and when so probated, it amounts to nothing more nor less than the institution of a special proceeding, which does not become final for one year, during which time any person interested may file a petition in contest and litigate every question going to the validity of the will, its execution or the probate thereof.

This special proceeding to probate the will, was instituted on March 8, 1901, many months prior to the filing of this bill in equity, and these appellants filed in the state court, their petition in contest of this will and their petition was not disposed of until on January 6, 1905, when the state court dismissed it. And we call the Court's attention to this law, because these appellants will argue that the federal court and the state court have concurrent jurisdiction as to all matters affecting the validity of the will, but we insist that even if this were true as a matter of law, it is also true as a matter of law that whichever court first assumes jurisdiction to determine these questions, that court will proceed to a final determination without any interference from any other court.

The supreme court of California, In re Joseph's Estate, 50 Pac., 786, says:

"We think, without doubt, a petition to probate a will is the beginning of a special proceeding * * * The order admitting to probate is not final so long as proceedings may be taken to revoke the probate."

"In all subsequent stages the contest is but a part of the proceeding to probate the will and is not a new and distinct proceeding."

Higgins vs. Nethery, 30 Wash., 239.
In re Estate of Abbie H. H. Stuart. Hunt vs. Phillips, et al., 34 Wash.., 362.
Zimmerman vs. So. Belle, 80 Fed., 417.
Hughes vs. Green, 84 Fed., 833.
Nugent vs. Phila. Traction Co., 87 Fed., 251.

Marks vs. Marks, 75 Fed., 322.

Taylor vs. Taintor, 16 Wall., 370.

Gamble vs. City of San Diego, 79 Fed., at page 500.

"When the statute requires notice of the proceeding to probate or contest a will, the judgment of the court cannot be collaterally attacked for want of notice if the party not notified may still contest the will by appeal and trial de novo or by a statutory action suit or other proceeding."

16 En. Pl. & Pr., 1004.

Hall vs. Hall, 47 Ala., 290.

Herring vs. Ricketts, 101 Ala., 340.

Dickey vs. Vann, 81 Ala., 425.

Wetmore vs. Parker, 52 N. Y., 450.

This record discloses the fact that all questions to be determined in this action are now or have been pending in the state court of Washington, and were so pending, before the federal court assumed jurisdiction and so far the state courts, in the exercise of the powers and duties lodged with them, have held that the probate court In re estate of John Sullivan, deceased, acquired jurisdiction to probate the nuncupative will and that the decree probating the same found all the jurisdictional facts required by the statute.

It is conceded that the probate court, administering this estate, must distribute the estate and in making a decree of distribution, it must necessarily determine who the heirs and legatees of this estate are, if any there be. So far, the state courts have held the will valid and the nuncupative statute constitutional.

And can it be said that notwithstanding this, the federal court will hold that the probate court had no jurisdiction and annul the decree entered therein to maintain its jurisdiction? It must do so upon the theory that the state court had not jurisdiction, if so, we have these results, the federal court holds

that the probate court had no jurisdiction to probate the will, the probate court holds that it had jurisdiction, and in the exercise of such jurisdiction, the will was regularly probated. Which court will yield? Which decree will become effective? In what way can the federal court make its decree effective? Which court will the administrator of this estate obey? One court has ordered him to distribute this estate to certain individuals and the other court has ordered him to distribute the estate to another, to-wit, to a legatee under the will. Which court will he obey? The circuit court enjoined Marie Carrau from making any claim under the nuncupative will, as probated and the state court holds the nuncupative will valid and that she alone is entitled to the estate. Can it be possible, that the courts even of concurrent jurisdiction, will permit these conditions to exist? Should Circuit Judge Hanford's decision be the law when the state court comes to distribute this estate, will it suspend its own judgment and decree in deference to the federal court?

If the jurisdiction of the federal court can be maintained in this suit, then more than 50 per cent. of disputes over wills can be brought into this jurisdiction and the jurisdiction of the United States circuit courts under the act of 1877 as corrected by the act of 1888 enlarged rather than reduced the jurisdiction.

ABSENCE OF NECESSARY PARTIES.

7. But, conceding for the purpose of argument, that the circuit court had jurisdiction of the subject matter, the record in this proceeding shows that there exists a defect of necessary parties who if made parties at once ousts the court of its jurisdiction on the ground of citizenship. Marie Carrau is a citizen of the state of Washington, and Eugene Timothy Sullivan and his sister are each citizens of the state of Washington, and each claiming to be the only heirs of the deceased Sulli-

van, and claiming the whole of the estate against Marie Carman, the sole legatee under the nuncupative will, and these facts appearing, the federal court is ousted of its jurisdiction and the circuit court should have declined to proceed further for that reason, and these facts do appear affirmatively in the pleadings. As was pointed out by the circuit court of appeals, in reversing the decision of Circuit Judge Hanford, Eugene Timothy Sullivan and his sister were necessary parties to the litigation and we think it can scarcely be disputed that it was necessary to have all the adverse claimants before the court before any determination as to the rights of any claimant in and to this estate could be determined. The circuit court held that these appellants were first cousins, and to that extent, that question was litigated against Eugene Timothy Sullivan, his sister and all other claimants without their being before the court. The circuit judge based his right to maintain jurisdiction upon his construction of the following cases:

Payne vs. Hook, 7 Wall., 425.

Gaines vs. Fuentes, et al., 92 U. S., 10.

Byers vs. McAuley, 149 U. S., 620,

and the case of

Richardson vs. Green, 61 Fed., 423,

S. C. 159 U. S., 264.

(See opinion of Judge Hanford, Transcript, page 122).

But, as pointed out in the opinion of the circuit court of appeals in this case, none of these citations support the circuit court's conclusion.

In the Byers case, the supreme court of the United States held that the circuit court erred in taking any action or in entering any decree looking toward the administration of the estate or attempting to adjudicate the rights of citizens of the state as between themselves. But because it ap-

pears that the debts of the estate had been paid and the estate was ready for distribution but that no adjudication had been made as to the distributees and speaking of these conditions, the court said:

"In that exigency, the circuit court might entertain jurisdiction in favor of all citizens of other states to determine and award their shares in the estate. Further than that, it was not at liberty to go."

We think we are justified in concluding that in the Byers case, all necessary parties were before the court, at least no question of this nature was presented or considered, and in speaking of this matter, the circuit court of appeals says:

"In the case at bar, however, there were persons not made parties to the suit who claimed to be the sole and exclusive heirs of the deceased and who if made parties would, on the ground of citizenship, oust the federal court of any jurisdiction in the premises. If any of those claims be well founded, it would of course, result that the claimants were therefore essential parties to the controversy, concerning the heirship in question, and we think counsel for the appellees (appellants here) altogether mistaken in saying that there is anything to the contrary in Byers vs. McAuley or in the case of Payne vs. Hook."

Carran vs. O'Callaghan, 125 Fed., 656.

We think this Honorable Court very clearly announced the doctrine for which we contend in the case of

The State of California vs. The Southern Pacific Company, 157 U. S., 229,

in which the court used this language:

"Can the court proceed to a decree as between the state and the Southern Pacific Company and do complete and final justice without affecting other persons not before the court or leaving the controversy in such condition that its final termination might be wholly inconsistent with equity and good conscience."

In the above action it was plainly apparent that a decree in the case could not directly affect the city of Oakland, because the city was not a party to the action, but by making the

city of Oakland a party to the suit, the federal court would have been ousted of its jurisdiction, and the court says:

"We have no hesitation in holding that when an original cause is pending in this court, to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication, to proceed in the absence of parties whose rights would be in effect determined even though they might not be technically bound in subsequent litigation in some other tribunal."

But the decision of the circuit court in determining that these appellants were the first cousins of the deceased, upon the face of the decree, took so much interest in the assets of this estate away from the other claimants by establishing that they were heirs and entitled to inherit, and while they would not be technically bound by the decision of the circuit court, because they were not parties to the litigation, still such a decision would complicate the litigation growing out of the various claims made to the estate and result in a multiplicity of suits, and the decision of the federal court would therefore accomplish nothing, and it would be in violation of the plain principles of law, that all parties in interest must be brought before the court, so that the court may be enabled to make a complete decree between all the parties in interest concerning the subject matter, and in speaking of this principle and procedure, Justice Lamar, in the case of

Gregory vs. Stetson, 133 U. S., 579,

quoting from Story's Equity Pleading, says:

"By this means (having all parties in interest before the court) the court is enabled to make a complete decree between the parties to prevent future litigation by taking away the necessity of a multiplicity of suits and to make it perfectly certain that no injustice is done either to the parties before it or to others who are interested in the subject matter by a decree which might otherwise be grounded upon a partial view only, of the real merits.

"The general question involved therein, has been before this court a number of times and it is now well settled that notwithstanding the statute referred to and the 47 Equity rule the circuit court can make no decree in a suit in the absence of a party whose rights must necessarily be affected thereby."

8. The pleadings disclose the following facts:

a. That the subject matter of the litigation between these appellants and Marie Carrau, respondent, is a probated will dividing the assets of an estate situate wholly within the county of King, in the state of Washington, over which the state court assumed jurisdiction, not alone as to the subject matter, but as to all persons claiming any interest in the subject matter.

b. That in said state court, a large number of claimants are contending against Marie Carrau, for the assets of said estate, each one claiming to be the sole heir of Sullivan, deceased, and that among these claimants is Eugene Timothy Sullivan, a citizen of the state of Washington, who for himself and sister, is seeking to contest the will and secure the property, upon the claim that he and his sister are the sole heirs at law of the deceased. And that the other claimants are citizens of almost every state in the Union, as well as of Canada, and a number of foreign countries, but that none of these claimants are parties to this litigation.

c. That a nuncupative will was admitted to probate and a decree regularly probating the same, entered by the state court many months before these appellants filed their bill in the federal court.

d. That the real purpose of this bill is to contest that will so probated, and to set aside the decree probating it, and to cause a decree to be entered in the federal court which will furnish the basis to compel the state court, if necessary, to distribute the whole of the assets of said estate to these appellants.

c. And from these facts, two things are apparent:

First—That no decree can be entered here which will be binding upon the other claimants of this estate who are not parties hereto, and yet a decree in favor of these appellants would indirectly affect the rights of every individual who claimed to be the sole heir at law of the deceased; and,

Second—That if the claimants were made parties to this suit , the court would be ousted of its jurisdiction by reason of citizenship.

9. Based upon these conceded facts, we respectfully contend for the following propositions of law, which represent the principles of law, announced by the circuit court of appeals, in reversing Circuit Judge Hanford:

"A court of equity will not assume jurisdiction to determine any matter unless such determination will be a complete and final determination of all the matters involved, both as to the subject matter and the persons interested, and if it appears at any time that other parties are necessary parties to a full and complete adjudication they must be added or brought in, and if by bringing them in the court would be thereby ousted of its jurisdiction, the action must be dismissed."

Morgan's Heirs vs. Morgan, et al., 4 Law Ed. U. S., 242.

Marshall vs. Beverly, 5 U. S. Law Ed., p. 97.

Russell vs. Clark's Extrs., 3 U. S. Law Ed., 271.

Shields vs. Barron, 15 Law Ed., 159.

Mallow vs. Hinde, 12 Wheat., 197.

Cameron vs. McRoberts, 3 Wh., 591.

Hardy vs. Handy, 11 Wh., 132.

Elmdorf vs. Taylor, 23 U. S., 167.

State of California vs. Southern Pacific Co., 157 U. S., 229.

Gregory vs. Stelson, 133 U. S., 579.

Picquet vs. Swan, 5 Mason F. C. No. 11, 135.

Peasley vs. Shively, (Ore.) 26 Pacific, 846.

Stallcup vs. Tacoma, 13 Wash., 153.

Consolidated Water Co. vs San Diego, 93 Fed., 849.

Collins Mfg. Co. vs Ferguson Trustees, 54 Fed., 721.

10. As to the necessity of having all persons legally or beneficially interested in the subject matter of a suit before the court, and as to the principles of law involved, we cite the case of the State of Minnesota vs. Northern Securities Co., usually referred to as the "Merger Case," in which the court uses the following language:

"The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject matter of a suit are to be made parties to it so that there may be a complete decree which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits and to make it perfectly certain that no injustice is done either to the parties before it or to others who are interested in the subject matter, by a decree which might otherwise be granted upon a partial view only of the merits.

"This is founded upon clear reasons and may be enforced by the court sua sponte though not raised by the pleadings or suggested by the counsel."

State of Minnesota vs. Northern Securities Co., 194 U. S., 48.

We here suggest to the Court, that all questions with reference to kinship or of the legal sufficiency of this will, are pure questions of law and not of equity, and therefore, the Court in any event, would be unable to grant equitable relief, because the only question that could possibly give this court equitable jurisdiction, fails for want of parties who, if added, would oust the court of jurisdiction, on the ground of citizenship, and this doctrine is well stated in the case of Mitchell vs. Dowell, in the following language:

"The rule is, that where a cause of action cognizable at law is entertained in equity on the ground of some equitable relief sought by the bill, which it turns out, cannot, for defect of parties or other reason, be granted, the court is without jurisdiction to proceed further, and should dismiss the bill and remit the cause to a court of law."

Mitchell vs. Dowell, 26 U. S. L. E., 1142.

Kramer vs. Cohn, 30 U. S. Law Ed., 439.

Cherokee Nation vs. Southern Kan. Ry., 33 Fed., 915.

Alger vs. Anderson, 92 Fed., 711.

Gamage vs. Harris, 11 Atl., 423.

Reay vs. Raynor, 19 Fed., 308.

The statute of Washington, in force, enacted March 9th, 1891, provides for contest of wills as follows:

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction ,contest the validity of said will, or pray to have the will proven that has been rejected, he shall file a petition containing his objections and exceptions to said will, or to rejection thereof. Issues shall be made up,tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of such will."

2 Hill's Code, sec. 872, p. 390.

The probate court of King county acquired jurisdiction of the subject matter and probated the will, with an open door to all interested parties to enter that court within one year and raise all questions, and until these appellants attach themselves to the subject matter, and litigate the validity of the decree of probate and their alleged rights to the property in the state court, that decree must stand as a finality and deprives any court of jurisdiction except a court of appellante jursdiction, to review the decision of the probate court.

Gaines vs. New Orleans, 6 Wallace, 642.
Southworth vs. Adams, 4 Fed., 3.
Wahl vs. Franz, 100 Fed., 680.

If this Honorable Court passes upon the question of jurisdiction of the circuit court, and reverses the circuit court of appeals in this particular, the case will then no doubt, be sent back to the circuit court of appeals, which court will then pass upon the merits of the appeal aside from the question of jurisdiction, but recognizing the possibility of this Honorable Court passing upon the merits aside from the question of jurisdiction, without returnng the case to the circuit court of appeals, we beg leave briefly, to call the Court's attention to our position as to other questions involved in such consideration.

The bill in equity seeks to raise the question of the constitutionality of the act with reference to nuncupative wills in the state of Washington. The federal court has not only been asked to review and set aside the action of the probate court, with reference to said will in admitting it to probate and to vacate and set aside the decree, but it has also been urged to pass upon the constitutionality of the act of the legislature relating to nuncupative wills in advance of the state court, notwithstanding the record discloses the fact that this queston is pending in various forms before the state court and that the state courts have so far held the will valid, the decree proper and the law constitutional, and we urge upon this Court that under such circumstances the federal court will refuse to pass upon the question of the constitutionality of this law and when it does will follow the decisions of the state court and the follownig authorities sustain this contention:

Pelton vs. National Bank, 101 U. S., 143; 25 Law Ed. 901.

Cummings vs. National Bank, 101 U. S., 155; 25 Law Ed. 904.

Hills vs. Exchange Bank, 105 U. S., 319; 26 Law Ed. 1052.

Western Union Telegraph Co. vs. Poe, 61 Fed., 469.

Same case, 64 Fed., 11.

The case last cited, presented to the circuit court the question of the constitutionality of a certain state law but the federal court for many months withheld its decision with reference thereto, awaiting the action of the state court, but finally did pass upon the act, holding it unconstitutional, but thereafter the state court passed upon the act and held it constitutional, whereupon the federal court reversed its former ruling and rendered a decision in harmony with that of the state court and because the state court so held.

State Railroad tax cases, 92 U. S., 575, 617 and 618.

Buserman vs. Bank, 147 U. S., [illegible].

Moores vs. Bank, 104 U. S., 625.

Stutsman vs. Wallace, 142 U. S., 293.

Saydam vs. Williamson, 24 How., 427.

Fairfield vs. County of Gallatus, 100 U. S., 47.

IS THE ACT CONSTITUTIONAL?

The act containing the section relating to nuncupative wills was first passed in 1854, Session Laws Territory of Washington, p. 512. This act not only embraced matters relating to the execution of wills, etc., but also covered other questions of descent, court practice, etc. In 1860 the law of 1854 was re-enacted under substantially the same provisions (Laws 1860, p. 165) under the title "An act defining the jurisdiction and practice in the probate courts of Washington Territory." In 1863 substantially the same subject matter was gone over under

the same title of the act of 1860. (Laws of 1863, p. 198.) In 1873, under the same title as the last act substantially the same subject matter was re-enacted with the change wrought in the section relating to nuncupative wills by dropping out the "nor" in the third line of said section, leaving it without limit as to the amount and character of the estate which could be devised under such a will, when properly proven under the provisions of the act, and the act of 1873 has been incorporated into every legally authorized codification of the laws of this state since that date. The section in question appearing in the Code of 1881 as section 1329, in Hill's Code, as section 1469, and in Ballinger's Code as section 4605. Conceding for the present that the section in question is not within the scope of the title to the act of 1873, we maintain that the enactment into the Code of 1881 of the same provisions made it the law upon that question, and that section 1329 of the law of 1881, has, ever since the adoption of that Code, been the law of this state. It is true that under the provisions of the Code of 1881 prior laws incorporated therein were not new enactments, but were to be construed as continuations of such laws, but this provision makes no difference with the point we make.

If it be contended by complainants that the law of 1854 is the law, then we say that such was never incorporated in the Code of 1881, and therefore cannot be the law, and the legislature having enacted a provision in the Code of 1881 in the place of the act of 1854, such provsion becomes the law. The supreme court of Washington, to our mind, has fully confirmed our position in the case of *Philbrick vs. Andrews*, 8 Wash., 7. It will appear from that case that under the laws of 1877, a person claiming a homestead was required to enter on the margin of the record the word "homestead" in order to make

the claim good. This provision was dropped from the Code of 1881 and another incorporated in lieu thereof to the effect that such homestead might be selected at any time before sale. The supreme court held that the change in the Code repealed the former act.

See also *Marstor vs. Humes*, 3 Wash., 267.
Grantz vs. McKenzie, 3 Wash., 194.

If the law of 1854 was in force then it was dropped out of the Code and another took its place just as was done in the case of the homestead provision. The contention of complainants that the law of 1873 was invalid adds no force to their position nor does it weaken respondent's in the least, for it may have been that very reason which caused the legislature to give a new expression to the same subject matter in the Code. To contend otherwise would be to take the illogical position that the legislature would have no power to relegislate upon the subject matter of a void act, or if it did so, such legislation would be of no force or effect, because perchance some former act covering the same subject matter had a bad title. The case of Philbrick vs. Andrews is the only case in this state wherein the question as to conflict between the provisions of the Code of 1881 and the prior laws has ever been considered, so far as we have been able to ascertain. All the other cases, commencing with the case of the *State vs. Rosencrantz*, 2 Wash. Ter., 267, down to the case of *In re Moore*, 81 Fed., 356, have been cases bearing upon the sufficiency of enactments since the Code of 1881.

The Codes of 1881 and Hill's Code are recognized as valid compilations of the laws of the territory and state, and have always been considered and recognized as the law.

Marstor vs. Humes, 3 Wash., 267.
State vs. Halbert, 14 Wash., 306.

But the title of the act of 1873 was sufficient to comply with the requirements of the organic act.

"The organic act of the territory required nothing more than that the one particular object of the law should be expressed in the title and did not require the title to specify minutely the means by which it was proposed to reach the object in view."

In re Moore, supra.

Under the foregoing rule we claim the title sufficient. The object embraced in the title was to define the jurisdiction and practice of the probate court. If the probate court was vested with authority over wills and estates as an inherent power, which must be admitted, then it becomes necessary to define what acts were necessary to bring a purported will within its jurisdiction as a valid will, and this could not be done wthout prescribing the formalities that were necessary in its execution and proof. The pointing out of all those things were necessary and incidental to defining the jurisdiction and practice relating thereto. It seems to us that the only way this contention can sucessfully be met is to argue that the subject of wills could not be in any way covered by a title defining the jurisdiction and practice of probate courts. If such a title could cover anything relating to wills, then it would surely cover formalities in their execution necessary to admit them to probate. The law as well as general knowledge and custom has always recognzed that the subject of wills has been a branch of probate law. Then why should not the subject of wills come within such title as well as any other recognized and inherent branch of the probate court law? If some subject not germane to the general question should have been incorporated into the act, as for instance, a matter relating to attachments in civil proceedings for collection of debts, divorce or crimes and misdemeanors, subjects which the ordinary layman

would not think of looking for in a probate code, then we would concede the point well taken. Suppose that the legislature had used the title "An act to adopt a probate code," could it be sucessfully contended that the title would not be sufficiently comprehensive to cover a provision prescribing formalities necessary in the execution of wills to admit them to probate? Yet the title in question amounts to the same thing, and is just as comprehensive. The object of the constitutional provision is to prevent surreptitious legislation by running something into an act of which no one would have notice. The title to the act is the notice, and if such title is reasonably effective to give notice the requirements of the constitution have been fulfilled. Is there a person, be he judge, practitioner, legislator or layman, who would not first of all look for and expect to find some provision under the title in question relating to the execution, validity and proof of wills?

"The object should be grave and the conflict between the statute and the constitution palpable, before the judiciary should disregard a legislative enactment, upon the sole ground that it embraced more than one object, or if but one object, that it was not sufficiently expressed by the title."

Montclair Township vs. Ramsdell, 107 U. S., 147.

The above case states the rule as quoted and which has been almost universally adopted. It is further shown in the above case that under the title "An act to incorporate a certain township," any power could be conferred or any act delegated to such township which could legally be vested in it.

In *Harrison vs. Harrison,* 47 Minn., 575, 28 A. St. Rep., 382, we find a case directly in point because of the great similarity of the title to the act and its provisions to the title and act in question.

The act there was entitled "An act to establish a probate code," and embraced 21 sub-chapters containing 326 sections

covering the law of wills, their probate, descent and distribution and fixing and establishing property rights and guardianship. These questions were all held to be germane to the title of the act. The court says:

"The law of wills and of title to property by descent is a part of the law relating to the estates of deceased persons and hence is, in popular understanding, if not legally, a part of the general subject of probate law."

To the same point see *Central Ga. Ry. Co. vs. State*, 31 S. E., 531.

Hudnall vs. Ham, 49, 985, in which it was held on the same principle that a provision in an act to the effect that a marriage "shall be deemed a revocation of a prior will," comes within the title of "An act in regard to descent of property." If the provisions of the act are germane to, referable and cognate and come under the general idea of the title and would naturally be suggested by it, they are not open to question.

Walnut vs. Wade, 103 U. S., 683.

Unity vs. Burrage, 103 U. S., 447.

Tabor vs. Commercial Nat. Bank, 62 Fed., 383..

Antonia vs. Mchaffy, 96 U. S., 312.

Hronek vs. People, 134 Ill., 139.

Jones vs. Aspen Hdw. Co., 21 Colo., 263, Am. St., 220.

Richman vs. Supervisors, 77 Ia., 14, Am. St., 308.

Hellman vs. Shoulters, 114 Cal., 136.

Van Brant vs. Flatbush, 128 N. Y., 50.

Woodruff vs. Baldwin, 23 Kan., 491.

Paxton, etc. Land Co. vs. Farmers' Land Co., 45 Neb., 884, 50 Am. St., 585.

Washington supreme court has laid down substantially the same rule as announced in the above cases.

Commissioners vs. Davies, 1 Wash., 290.

State vs. Spokane Falls, 2 Wash., 40.

Marston vs. Humes, 3 Wash., 267.
Maling vs. Crummey, 5 Wash., 222.
Seymour vs. Tacoma, 6 Wash., 138.
State ex rel. vs. Whittlesey, 17 Wash., 447.
Swinburn vs. Mills, 17 Wash., 611.
Lewis County vs. Gordon, 20 Wash., 80.
Skagit County vs. McLean, 20 Wash., 92.

Considerable stress has been laid on the case of *Anderson vs. Whatcom County,* 15 Wash., 47, as sustaining complainants' contention. We submit that this case presents an illustration where the act complained of went clearly and unmistakably beyond the scope of the title. The court saying that the title 'would not suggest to the mind the question of salaries in any respect."

Our statutes with reference to wills will be found as follows, Ballinger, section 4594:

"Every person who shall have attained the age of majority, of sound mind, may by last will devise all his or her estate, real and personal."

Section 4595:

"Every will shall be in writing, signed by the testator or testatrix, or by some other person under his or her direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator."

Section 4605 says:

"No nuncupative will shall be good when the estate bequeathed exceeds the value of $200, unless the same be proved by two witnesses who were present at the making thereof, and that it be proven that the testator, at the time of pronouncing the same, bid some person present to bear witness that such was his will, or to that effect, and such nuncupative will was made at the time of the last sickness, and at the dwelling house of deceased, or where he had been residing for a space of ten days or more, except where such person was taken sick from home and died before his return. Nothing herein con-

tained shall prevent any mariner at sea or soldier in the military service, from disposing of his wages or other personal property by nuncupative will."

These sections were all enacted by the legislature of the territory of Washington, in 1854, and were codified and carried in the Code of 1881. From this section it will be noticed that a person may bequeath an estate which does not exceed $200, without any requirements whatever, with reference to its proof, etc., but where the estate exceeds $200, then the statute provides the number of witnesses, the time of making, the time of proof, and the place where made.

The objections urged against this nuncupative will do not relate to the regularity of its execution, nor is it contended that it is insufficient or that the proof was insufficient, but as we understand the position of the solicitors for the complainants, they insist only that the will was never made. In other words, the persons who were called as witnesses and by whose evidence the will was established, were perjurers, because the very circumstances surrounding all of them and the making of this will are such as to make it appear unreasonable that it was ever made. But the Court will be slow to convict these people of perjury because of the opportunity they had to commit perjury. Not a single statement made is inconsistent with truth. It must be admitted that all these things might happen any day. The fact that it is unusual would not make it unreasonable. The fact that this estate is valuable would only add to the inducement. It would not affect the weight to be given to the testimony. The law itself is a reasonable one. Its provisions are reasonable, the very things required to be said and done are the perfectly natural things to be said and done, by any one realizing the approach of death. It was but natural that Sullivan should have some one present, bear witness.

The very desire to give his property to the lady he intended to make his wife, would suggest that he made the statements he did make, and in the manner he made them, and an examination of Sullivan's letters, made exhibits, will show his command of language and power of expression. But the evidence as to the making of the will is corroborated in many particulars by the evidence of Father Sweere, the spiritual adviser of Miss Carrau, and the evidence of Mr. Kelleher, the lawyer who was consulted immediately after Sullivan's death, to find whether or not an oral will was valid in Washington.

THE VALIDITY OF THE NUNCUPATIVE WILL.

In the first place the term "estate" used in this law is broad enough to include all kinds of property as well as choses in action, and the supreme court of Washington has determined that the word "estate" includes every character of property. It is contended by solicitors for complainants that the phrase "estate bequeathed" used under section 4605, Ballinger, limits the meaning of the whole section; but that is upon the theory that the term "bequest" under the old rule of interpretation, applied only to personal property, while the term "devise" applied only to real property. But it will be remembered that the reason for the old rule was found in the statutes of 32 Henry VIII. and statutes 29 Car. II.

Sections I. of the former and V. of the latter provided that lands or tenements should be devised only in writing, as follows:

"That all devises and bequests of any lands or tenements devisable either by force of the statute of wills or by this statute or by force of custom of Kent or the custom of any borough or any other particular custom *shall be in writing* and signed by the party," etc.

So it will be seen that under those statutes, wills were re-

quired to be in writing. These provisions were purely statutory and governed then, and statutory provisions must govern now. An examination of these two statutes and section 4605 of Ballinger's Code of Washington will disclose the fact that those provisions are omitted from our statutes, and we insist that had the legislature intended that nuncupative wills should not pass real estate, it would have enacted into our law at least the substance of the above sections.

It will not be seriously controverted that when the legislature has spoken on any subject matter and omitted certain provisions, contained in the common law, that the legislature acted intelligently and omitted for a purpose, and certainly the Court would not be justified in reading into an act of the legislature that which is omitted. We think the reasonable presumption is that when the legislature enacts a statute, the substance and necessity of which is gathered from the common law, and omits certain restrictions or substance, that it does so intelligently and for a purpose apparent upon its face. Certainly there can be no good reason offered why real property should not be devised by nuncupative will as well as personal property, under our statute. Under our form of government, an individual's property may consist wholly of one class or the other. It may be all personality or all realty, and there can be no reason why the legislature should not enact a law permitting the owner of property to devise all he possesses by nuncupative will, and *we earnestly contend that nothing short of statutory affirmative provision can limit a nuncupative will to personal property.*

2d Ballinger, Sec. 4783, provides that the common law shall be the rule of decision.

In the case of *Gillis and wife vs. Weller*, 10 Ohio, 463, the court held that under the statutes of Ohio, a nuncupative will

devised real property. This decision is based upon an act of the legislature of February 26th, 1824. The court, in discussing this case, sets forth the various years during which nuncupative wills in the state of Ohio devised personal property only, as well as the years when such wills devised both personal and real property, and used the following language:

"The act of 1808 repeals the law of 1805, and prescribes the mode of execution of a verbal will without any direction as to the nature or limitation of the estate it may operate to convey. The first section of this act provides, however, that every person, etc., shall have power by such will and testament in writing to dispose of both real and personal estate. If personal property were not here enumerated, it might be contended, perhaps, with some plausibility, that a verbal will was not intended to pass realty, but as the term *written* as used in this section applied to both species of estates, and as the act makes provision for the due execution of a verbal will, and leaves it without restriction as to what may pass under it, it would seem to be general in its application, and nothing short of statutory provision can limit it to the personality."

The same provision is copied into the acts of 1810, 1816 and 1824 in relation to verbal wills.

This decison was approved in

Ashworth vs. Carleton, 12 Ohio St., 381.
Bellamy vs. Peeler, 96 Ga., 467.

In all the courts, so far as we have been able to discover, it has been held that real property might be devised by nuncupative will, and all decisions against this contention are based upon statutes which require, like the English statute, that all wills devising real property should be in writing. An examination of the decisions, we think, will establish the fact that wherever the states have enacted the statutes from England, and included the provisions that require wills to be in writing, the courts have agreed that nuncupative wills would devise only personal property. Otherwise a different rule applies.

Smithdeal vs. Smith, 64 N. C., 57 and the case of *Pierce vs. Pierce,* 46 Ind., at 86.

It was held that nuncupative wills would not devise real property, but each was based upon the statute, and for the reason that the statutes in each of these states, require that wills devsing real property, shall be in writing, a nuncupative will cannot devise real property.

In a few of the states where this statute has been construed, the courts have held that the change was so radical that the court could not believe that the legislature intended that one might devise real property by a nuncupative will. But the same reasoning might apply to every radical change made by the various legislatures in this Union.

In the case of *Lewis vs. Aylott,* 45 Texas, 190, the court reached this conclusion not only by reason of the statute with reference to descent of property, but it coupled therewith the statute with reference to conveyances, and upon the theory that there were but two methods of acquiring title to property—one by descent and one by purchase—and then further holding that the party taking by devise is deemed to take by purchase, and because the statute required the purchase to be evidenced by a writing, the court concluded that a nuncupative will could not devise real property. But we insist that reasoning is not sound and does not harmonize with modern construction given by the various courts throughout the Union.

It is also agreed that because the statute of wills and the statute of frauds have been adopted by the states of the Union (notwithstanding the very great modifications noticed) that a nuncupative will should pass only personal property.

Appellants will no doubt, cite to the Court, the case of

Price vs. Hazelton, 20 Johnson Reports, 501,

but a careful examination of this decision will convince the

Court that the conclusion reached has no possible bearing on the case at bar. That decision goes into the motives which prompted Jones to give his property to this woman, and for this reason the will is severely condemned. It bears upon its face everything but the decision of a well balanced judicial mind. Every circumstance which is condemned in that decision as furnishing a reason or an excuse for such a will is absent in the case at bar. To the Jones will there were urged two objections: First, that the "last sickness" under the statute, means sudden illness when the testator is in extremis and in the immediate prospect of death, and, secondly, that the will is void, because no executor is named.

So far as the circumstances surrounding the will of Sullivan are concerned, it is neither strange nor extraordinary. Here was a man sixty years of age, he had never had the comforts or advantages of a home; he had never felt the influence of the associations of cultured women, and it is not strange that he should center his affections upon Miss Carran. The attachment which he formed for her and she for him, was not out of the ordinary. By the very strictest economy he had acquired a fortune, and at his age it was perfectly natural that he should look around and devise means by which the rest of his life should yield him some comfort and pleasure. Miss Carran was a lady of culture and refinement; she was educated; she was engaged in teaching Mr. Sullivan French; she was thus thrown in his company, and in order that he might make greater progress he evidently desired to live in the home where French was the conversational language, believing that this would enable him the more rapidly to converse in French. And under all the circumstances we insist that it was the most natural thing for these two people to become attached to each other. Whether he had any heirs in

his native country is exceedingly doubtful; at least he thought he had none, and if he had, it is perfectly evident that he had no sympathy with or interest in them. It affirmatively appears from the evidence that not a single human being except Miss Carrau, had any hold on his affections, so as to become the object of his bounty. He was soon to be married to Miss Carrau, and under these circumstances, the days and weeks he lived in this dwelling where he died, were no doubt the happiest hours of his life. It is apparent that he had a strong apprehenson that his end was near, on the night when he called these parties to his room, and it seems to us that this devising his property to Miss Carrau was nothing but natural.

This Court will not erect itself into a tribunal to declare that the testator ought not to have devised his property in this manner or to this person. And we insist that this Honorable Court will not feel itself at liberty to disregard the testimony in support of this will, unless the same shall be successfully impeached according to the rules which govern a court of justice. The fact that there is some contradictory testimony on some points ought not and will not excite the surprise of the Court; it was to be expected. It comes with poor grace from those who opened graves and disturbed the dead in order to find some evidence that would establish the relationship of their clients to Sullivan, to charge Marie Carrau and the witnesses with perjury in their briefs. There is not a single statement in this testimony on the part of Miss Carrau, and her immediate family, that is inconsistent with truth. And we feel that this Honorable Court will charitably attribute any seeming discrepancies in this testimony to causes of misapprehension or mistake owing to their inability to understand English. Credible and intelligent witnesses take different views of the same circumstances and the same transactions, and in

many minor particulars, they do not agree. But we think courts generally look upon these discrepancies as the highest evidence of the truth of the important particulars. But there is no proof of fraud or imposition, there is no proof of conspiracy. There is nothing to impeach or discredit the witnesses. In Sullivan's selection of Miss Carran to become his wife, we have no concern. And his wishes in the hour of his death to bestow upon the woman he loved the accumulations of a life time, ought to be recognized by this Honorable Court as a duty both to the living and the dead.

It is contended by the solicitors for appellants, that a nuncupative will under the laws of Washington, if valid at all under the statute, devises only personal estate and does not devise real property and they seem to urge that fact as tending to invalidate the will, but while we insist that the statute containing the nuncupative will clause is constitutional and that it is impossible to hold that such a will does not devise real property without injecting into the statute words which the legislature omitted, still this objection would not go to the validity of the will. The will would be valid, not void, and be recognized by the courts to the extent that it did devise personal property. If appellants' construction of the statute is correct, this will would be ineffectual as to the heirs so far as the real property is concerned, and the will would be effectual for every other purpose. This construction would not furnish grounds for annulling the will or vacating the decree probating it. In no sense can this will be said to be void, and this question was squarely before the supreme court of the state of Washington, in the following cases:

Bower vs. Bower, 5 Wash., 225.
Barnes vs. Barker, 5 Wash., 390.
Hill vs. Hill, 7 Wash., 410.

Purdy vs. Davis, 13 Wash., 165.

Morrison vs. Morrison, 25 Wash., 472.

The testimony as to the will by Marie Carran is as follows: (Trans., 270.)

A. The night before he died, about eleven o'clock I think he told me to call my brother and my sister and the family, and I went to the rooms—and he wanted to see them to speak to them, and I went to the hall and called down the steps and called my brother, for them all to come up, and they ran up stairs quite excited, and I told them that Mr. Sullivan wanted to speak to them, and then they came in the room and Mr. Sullivan spoke to them these words:

"I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carran. I am sick, very sick, and I do not know what might happen."

Q. What further was said?

A. My brother said—I think my brother or sister said, "Thank you," and they walked away. They went out.

Q. Did you go out?

A. No, I remained for a little while. I remained about five or ten minutes. I could not say—I could not speak a word. I could not have spoken a word to save my life. He did not speak; he seemed very much exhausted and still. I told him that I was going to get some warm milk for him. He was very weak and he was breathing very heavily, so I thought some milk would do him good and help him. I went down stairs and had a little milk warmed for him and then I came up again and found him in bed and asleep; he had gone asleep.

Q. When next did you talk with him and what did you do—did you wake him up?

A. No, I did not wake him up. The doctor had told me to let him sleep if he wanted to sleep.

Q. When did you give him his medicine?

A. I was going to give it to him at two o'clock in the morning. I gave the medicine every six hours, but he was asleep, so I did not arouse him.

Q. Were you in to see him at two o'clock in the morning?

A. Oh, yes, I was in all the time there, you know—almost every five minutes, I went in. (271.)

Q. Now, did he continue to sleep on from that?

A. Yes, sir, slept all the time.

Q. Now, in what way was he sleeping—heavy, deep sleep?

A. Yes, sir, very deep, it seemed to me, but breathing very heavy, always very hard. He was breathing pretty hard, kind of a drowsiness more than anything else, I thought.

Q. Now, when he woke up, if he woke up again?

A. Well, I went to bed—I did not go to bed, but I retired to my room.

Q. The adjoining room?

A. Yes, sir.

Q. Who was rooming with you, if anyone?

A. My sister, in the same room, and I retired then, but I did not go to bed, but just put my morning wrapper on and laid down on the bed. I could not go to sleep. I tried to read but I could not read very well. I could not read at all. I listened for him and I heard no noise in the room only that he seemed asleep and quiet. I did not hear him moving at all. So I stayed in bed for quite a while and then I went asleep, and I think I slept although my sleep was so disturbed, and then I went to his room at seven o'clock, at about seven o'clock, but he still slept, but I roused him.

Q. You roused him?

A. Yes, sir, but he did not seem to rouse at all.

Q. Did not seem to talk?

A. No, he did not sem to be able to answer or to do any-

thing. I told my sister to bring his breakfast and try to have him take some little breakfast. And she brought breakfast. She always did. She brought the tray and I tried to feed him, to give him some egg—he always ate soft egg—and I brought one in a glass and tried to put a spoonful in his mouth, but he did not want it, he could not swallow it. And so I fixed the bed and I fixed everything in the room to make everything straight for the doctor when he came, and it took a little time, and then I went to my room and I came in the hall, and he did not seem to wake up and he did not wake up. At about eight o'clock—I think it was about eight o'clock—I asked him—he seemed to rouse a little, then I says:

"I am going to give you some beef tea, that may help give you strength," and I had given him beef tea quite often. The doctor had told me to.

Q. Well, what did he do then?

A. Well, then I went down stairs and warmed the tea and then I (272) ran up stairs again, and when I opened the door I found him—I did not know that he was dead, but I saw that his eyes were steady and I went up and tried to revive him. I thought that he had fainted and then I tried to revive him and chafed his hands and tried to give him—he had dropped his head that way—and I tried to lift up his head, and when I lifted it it dropped again and he seemed to look at me with a pitful look, and I do not know that he was dead, but I thought maybe there would be a chance to revive him. WhenI saw that I could not do anything for him then I ran down stairs and I first said, "My God! My God! he is dead." And then I ran down stairs and called my sister. And my sister said he was dead, and I says, "Don't say that to him; he may still be alive and hear you." I could not believe that he was dead; it was impossible for me to believe it, and I went

to him and told my sister to bring some vinegar. We always do that in France, to make them smell vinegar when they are fainting, but he was not fainting; he was dead. Then my sister called Mrs. Eames and my sister asked her what to do, and she said, "I will call the doctor," and I went down stairs and I knew the doctor's telephone number and I called for the doctor, and Mrs. Eames came and spoke to him because I could not understand what he said, and I went up stairs to him again.

These facts are also testified to by Louis Daussat (345), Hermance Carrau (438), Mrs. A. Daussat (464), and no evidence was offered to dispute or impeach these people, and their standing for truth and integrity was such that the appellants dared not attack them.

Q. Now, the night before his death, when he spoke these words that you have detailed, what did you do that night, after the folks had gone down and remained, what did you do about going down? (273.)

A. I went down and I took a pencil and a scrap of paper, and then I wrote down the words just as he said them to me.

A. I went down stairs, in what we call the sitting-room, and I opened the desk, the writing-desk, and I wrote the words.

Q. Now, what did you do about communicating, if you did communicate these facts to anyone, who did you communicate them to first and when?

A. Oh, I told Father Sweere.

Q. When and where?

A. It was in my house just after poor Mr. Sullivan died.

Q. Do you remember the time of day it was?

A. It was in the morning.

Q. What did you tell Father Sweere?

A. I told him of the will, the words just as they were,

and I requested him to have the kindness to go and see a lawyer for me and ask if that was a good one. Then he went, I think, and asked Mr. Kelleher, and Mr. Kelleher said it was not a good will.

Q. You need not state what he said to Mr. Kelleher, but state what he said to you?

A. He came on Saturday, the 29th, Father Sweere, and told me what he had learned, that the will was no good, that the oral will was no good.

Father Sweere testifies to the same facts and with reference to Sullivan's death, etc. (Trans., 219 and 220.)

Q. When did you learn first of his death?

A. I saw it in the morning paper.

Q. When?

A. Well, I think—I do not know that it was the evening paper or the morning paper, but I saw it, and I think it was the morning paper, the day after he died, you know.

Q. What did you do, if anything?

A. I went to see Miss Carrau that same morning as soon as I saw it in the paper, to see in what condition she was.

A. I found her very much dejected on account of the death of Mr. Sullivan.

Q. State what conversation, if any, you had with her that morning, concerning Mr. Sullivan.

A. (Continuing:) She told me that Mr. Sullivan had called them some time in the evening, between ten and eleven o'clock, and stated that he left all his real and personal estate to Marie Carrau.

Q. What did you do then?

A. She asked me to see a lawyer about this verbal will, whether it was any good, and I do not know, how many days, I waited, whether one day or two days, but I saw Dan

Kelleher, and asked him whether a verbal will made before witnesses was legal in this case, and he said no.

A. (Continuing:) Then I told Marie Carran what Dan Kelleher had said.

Q. What conversation, if any, did you have with anyone else, if you had any?

A. About this matter?

A. I do not know how long after that; it was perhaps some days, and perhaps weeks. I was on some business in Mr. Donworth's office, on business of my own, rather, and he brought up a conversation of this will case, or whether I did I don't remember, but he said he thought it was null and void. I told him that if he knew the circumstances as much as I knew about, I thought at least the intention of Sullivan was to have her his heir, as far as I could see.

A. That it was Sullivan's intention, as far as I could see, that she was to be his heir; that is what I told him. I gave him my reasons. After I gave him my reasons he told me if that was the case we had better pursue it.

The wife of Dr. Eames testified in substance, that for many years, they had lived next door neighbor to Marie Carran, and in speaking of Miss Carran's life, said:

"She lived very quietly. She received few callers. Never knew her to have a man call on her, she never was in company with any man except Mr. Sullivan, that I knew of. Her life was of the purest and the best, she was devoted to her church, being a Roman Catholic, and lived as good and pure a life as any one could." (Trans., page 242.)

And again, on page 243, she testified as to a conversation between Miss Carran and Mr. Sullivan, shortly before his death, in which Mr. Sullivan said:

"As you know, I have no relatives and no friends and I am possessed of a good deal of means, property, money, and if you consent to become my wife, I will absolutely convey to you everything I possess in this world. I love you dearly and I feel I cannot live without you."

We quote this evidence to show the character of Marie Carrau and her relations with Mr. Sullivan, and in opposition to the claim made by the solicitors for these appellants, that this will was the result of a conspiracy.

The contention by solicitors for appellants, that the nuncupative will was a "fraud and born of a conspiracy" between this respondent and W .F. Hayes, and that the same was not heard of for months after the death of Sullivan, is flatly contradicted by the testimony of Marie Carrau at page 273, and by Father Sweere at pages 218, 219 and 220, in which the latter testified that upon reading in the newspaper of Sullivan's death, the next morning after his death, he immediately visited this respondent for the purpose of consoling her in her grief. He knew of the engagement of Marie Carrau to John Sullivan, and was her spiritual comforter, and the respondent on this first visit after the death told him of the very words spoken by Sullivan the night of his death, and which constitute the nuncupative will, and was then asked to see a lawyer and learn if an oral will was good, which the father did and reported to Marie Carrau that it was not, page 219, and the evidence shows that Hayes knew nothing of these words having been spoken, for months thereafter, and that it only came to him incidentally through his family, and after learning that Attorney Hayes thought these words sufficient, she went to see him at his office.

And again, these facts were made known to the firm of Piles, Donworth & Howe and Judge Burk, very shortly after Sullivan's death, and long before any attempt was made to probate the nuncupative will and before Hayes ever heard of the will, and these statements are not denied, page 220, Trans.; and the record also shows the reason why she did not attempt earlier to prove the nuncupative will, which was because Law-

yer Kelleher had told Father Sweere that these words spoken did not constitute a will in this state, and the father had carried this information to her.

And we insist that there is not a statement anywhere in the record that throws the least suspicion on the entire good faith and honesty of this respondent and those connected with this will and its probation. Every circumstance surrounding the transaction and every word and act on the part of Marie Carran, is consistent with the very highest integrity and from beginning to end there is nothing strange, unusual or unreasonable. There was nothing said or done that would not be said or done by the purest woman in the world; that she was engaged to Sullivan and that they would have been married October 1, 1900, is placed beyond dispute by this record, and believing in the absolute integrity of John Sullivan, it was not strange that Marie Carran believed that he had willed to her all of his estate, and knowing nothing of the laws' requirements with reference thereto, it was not strange, after Father Sweere had told her that an oral will was not good in this state, that she should believe that there must be a written will in existence. Believing that Sullivan intended her to inherit his fortune, she has done what a woman without means could do to receive the benefits thereof. It is perhaps, not strange when the evidence taken in Ireland has been read and the character of the witnesses and the conduct of their coachers considered, that Marie Carran and her family should have their integrity and good faith questioned by innuendo. At every step in the pathway of the fight for this estate, wherever Marie Carran or her attorneys or the courts, have for one moment checked the approach of these appellants or their

hungry representatives to the possession of the assets of this $500,000 estate, they have cried fraud and conspiracy.

APPELLANTS NOT INTERESTED PARTIES.

A careful reading of the testimony taken in Ireland in support of the alleged relationship to the deceased Sullivan, will, we confidently submit, convince the Court, that they were in no manner related. Carran's Exhibit A (Trans. 809) furnishes the fatal "missing link" in the chain of kinship upon which the rights of appellants depend, and this weakness destroys the whole chain.

Bridget McAuliffe was the child of Denis McAuliffe and not the child of Daniel McAuliffe. So say the records. And these appellants must have established by competent proof that she was the child of Daniel before they can be heard as heirs of Sullivan. It is easy to draw upon one's imagination when stimulated by hunger for wealth, but to conclude that the church records meant "Daniel for Denis" can not be made to take the place of the proof required by the rules of evidence.

The Sullivans and the McAuliffes, the McAuliffes and the Murphys, the Norrys and the Honoras, are entirely too numerous, to accept the sameness of name alone to establish the kinship required to inherit.

We confidently assert that no one can read the testimony taken in Ireland in support of the appellants' allegations of kinship, without being impressed with the absolute want of knowledge of the persons who testified as to the Sullivan family, nor can one fail to see the "hand from Seattle" as they are helped over the weakness of memory.

Whether John Sullivan died with or without living relatives is still an open question, but sure it is, that these appel-

lants are not related, except upon the theory that "all men are brothers."

In closing we submit that the decision of the circuit court of appeals should be affirmed.

J. W. Robinson,

J. P. Houser,

Counsel for Respondents

Supreme Court of the United States.

No. 193.—October Term, 1904.

Hannah O'Callaghan and Edward Corcoran, Appellants, vs. Terence O'Brien, as Administrator of the Estate of John Sullivan, deceased; Marie Carrau, W. M. Russell, and S. F. Coombs.	Appeal from and Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[May 29, 1905.]

This suit was commenced in the Circuit Court of the United States for the District of Washington, Northern Division, by the filing on June 20, 1901, of a bill on behalf of Hannah O'Callaghan and Edward Corcoran, appellants in this court. The defendants were Terence O'Brien, as administrator of the estate of John Sullivan, and Marie Carrau. W. M. Russell and S. F. Coombs, who are joined as appellees, were the sureties on a bond given by Marie Carrau, on the appeal taken by her to the Circuit Court of Appeals.

It was averred that the complainants, aliens and residents of Ireland, were the first cousins and the sole heirs at law and next of kin of one John Sullivan, who died on September 26, 1900, in the city of Seattle, State of Washington, intestate, leaving a large amount of real and personal property. The appointment by the Superior Court of King County, State of Washington, of a special administrator and the subsequent appointment of the defendant O'Brien and his qualification as general administrator, were next averred. O'Brien and his codefendant were alleged to be citizens of the State of Washington. The remaining averments were, in substance, that the defendant Marie Carrau, confederating with certain named relatives, had manufactured a pretended nuncupative will of John Sullivan, in favor of said Marie Carrau, under which will she was claiming to be the sole legatee and devisee of all his property. The will purported to have been made about 11 o'clock on the night previous to the death of Sullivan, in the presence of Marie Carrau and her relatives, and the testamentary words employed or the substance thereof were alleged to be the following:

"I want you to remember and witness that I will all my property and personal effects, worth many thousands of dollars, to be the money and property of your sister, Marie Carrau. I am sick, and we know not what might happen."

It was averred that on the application of the defendant Carrau, and after the appointment of O'Brien as general administrator, the alleged nuncupative will was admitted to probate, and at the time of the filing of the bill stood as illegally probated on the records of the Superior Court of King County, State of Washington. It was, however, charged that the said Superior Court, in assuming to probate said nuncupative will, acted wholly without jurisdiction in the premises, for the reason that the estate bequeathed exceeded the value of two hundred dollars, and because no legal citations had been issued out of said court, and ten days had not elapsed between the filing of the will and the hearing of the proof offered in support of the same. It was further averred that under the laws of the State of Washington real estate could not be disposed of by a nuncupative will.

Further averring that the State court, on the application of Marie Carrau, was about to make and enter a decree distributing to her the whole of the Sullivan estate upon the execution of a bond conditioned for the payment of her proportion of the indebtedness of the estate, to which decree the defendant O'Brien, administrator, it was averred, would yield obedience, and that said Marie Carrau on receiving possession would transfer the estate to others, and alleging that such an order and the action of the administrator thereunder would violate the due process clause of the Constitution of the United States, an injunction and the appointment of a receiver was prayed. It was also prayed that a decree might be made adjudging the alleged nuncupative will to be null and void, and perpetually restraining the defendant Carrau from setting up any title or claim thereunder, and adjudging and decreeing the complainants to be the only heirs at law of the decedent and entitled to receive his estate, and commanding the defendant administrator to surrender possession thereof to and account therefor to the complainants.

On behalf of O'Brien, administrator, there was filed what was termed a "stipulation and answer," signed by the complainants and their solicitor and the administrator. In this paper the appointment of O'Brien was recited, and there was also embodied a disclaimer of any interest of said administrator in the subject matter of the controversy between complainants and the defendant Marie Carrau, or any knowledge in respect thereto other than as shown by the records. It was stipulated that no costs should be taxed aganist the administrator, and that complainants should not be put to proof of the allegations of the bill, so far as the same affected the administrator, and that the stipulation should be taken as and for an answer of said defendant administrator to the bill of complaint.

After other proceedings in the cause, not essential to be stated, an answer was filed on behalf of the defendant Carrau.

Briefly stated, the answer admitted the death of Sullivan, affirmed the validity of the alleged nuncupative will and of the probate thereof, and further averred that under the laws of Washington a nuncupative will, duly proved and probated, "devises both real and personal property to any amount in value." After specially answering each of the allegations of the bill, it was, in substance, averred, "by way of defence and as questioning the jurisdiction of the court," that the court in which the alleged will had been probated had the sole, original and exclusive jurisdiction of the probation of said will and the management of the estate of the decedent; that in said court various persons, including one Eugene Timothy Sullivan, a resident of the State of Washington, had filed their verified petitions, claiming each to be the sole heir of the decedent; that certain of said claimants, (Sullivan not being one of the number,) and also the complainants and the State of Washington, had commenced in the State court proceedings to contest the validity of the alleged will, and that such proceedings were at issue and were still pending.

Testimony was taken by commission and otherwise, under an agreement providing that the same might be read in evidence in any suit or proceeding which was then or might thereafter be pending in a State or Federal court affecting the estate of John Sullivan. Both during the taking of the testimony and at the hearing which followed, the objection to the jurisdiction of the court was reiterated and exceptions were reserved.

A decree was entered in favor of complainants. (116 Fed. Rep. 934.) In substance the decree found the complainants to be the next of kin of the decedent; that O'Brien was the duly qualified administrator; that the alleged nuncupative will was not made; that the Washington court acted wholly without jurisdiction in the probate of the alleged will, and hence the proceedings in respect thereto were void. It was decreed that the complainants, as first cousins of the deceased, were entitled to share equally in the assets of his estate, and the defendant O'Brien was directed to recognize their right. The defendant Carrau was perpetually restrained from setting up any claim to said estate, under the alleged will or otherwise.

On appeal the Circuit Court of Appeals reversed the decree of the Circuit Court for want of jurisdiction in that court over the subject matter and because of the absence of necessary parties, who, if made parties, would oust the court of jurisdiction, and the cause was remanded, with directions to dismiss the bill at the cost of complainants. (125 Fed. Rep. 657.) The cause was appealed to this court. Following the filing of a motion to dismiss such appeal, an application was made on behalf of the complainants below for the allowance of a writ of certiorari, and the determination of these two motions was postponed to the hearing on the merits.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The motion to dismiss the appeal and the application for the allowance of a writ of certiorari will first be passed upon.

While the alienage of complainants and the citizenship of respondents was alleged, the jurisdiction of the Circuit Court was not invoked solely upon that ground. It was asserted in the bill that the requirements of the Code of Washington had not been complied with in respect to the preliminary issue of citations to the next of kin of the decedent; that the hearing on the application to probate the alleged nuncupative will was had before service of citations in the mode prescribed by law, and as at the time of the filing of the bill six months had elapsed without lawful probate of the will, the title of complainants to the property as heirs and next of kin of the intestate had become absolute. The use by the defendant Carrau of the decree of probate as a muniment of title with which to obtain from the administrator under the authority of the State court the property of complainants in the custody of the administrator was, as a consequence, asserted to amount to a deprivation of property without due process of law, in violation of the Constitution of the United States.

The statute which it was asserted limited the authority of the Washington court to probate the nuncupative will in question, to a lawful probate thereof within six months of the speaking of the testamentary words, is as follows:

"No proof shall be received of any nuncupative will unless offered within six months after speaking the testamentary words, nor unless the words or the substance thereof be first committed to writing and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper." (Pierce's Code, 2352.)

It is settled that the mere averment of a constitutional question is not sufficient, where the question sought to be presented is so wanting in merit as to cause it to be frivolous or without any support whatever in reason. (*Fayerweather* v. *Ritch*, 195 U. S. 276, 299.) We think that the alleged violations of Federal right based upon the Fourteenth Amendment were so unsubstantial and devoid of merit that they furnish no real support to the contention that the decree of the Circuit Court of Appeals was not final. From this it follows that the motion to dismiss must prevail. But we are not thereby relieved of the duty of considering the correctness of the decree of the Circuit Court of Appeals, because in our opinion the case is one in which the writ of certiorari should be allowed. We therefore dismiss the appeal and grant the application for certiorari, treating the record filed on the appeal as a return to that writ. Before coming, however, to dispose of the case, we observe that we do not at this moment state the

reasons by which we are led to the conclusion that the rights asserted under the Constitution of the United States were so wholly wanting in merit as not to afford a basis for the appeal, because those reasons will be made manifest when we come to consider the question whether the bill was one within the jurisdiction of the Circuit Court.

The issue first for decision is, Did the Circuit Court of Appeals rightly hold that the Circuit Court was without jurisdiction of the case made by the bill?

The solution of the question is not free from complexity. Original reasoning is not, however, required, since the subject has been previously considered by this court. We come, therefore, to an analysis of the leading cases. It results from the analysis which we have made of the bill that by necessary effect it assailed the previous probate and the existence of the will, and, besides, under the hypothesis that a will and probate might be found to exist, sought to limit the operation and effect of the will. The subject, therefore, has a two-fold aspect, the power of Federal courts to entertain jurisdiction concerning the probate or the revocation of the probate of wills, where the requisite diversity of citizenship exists, and the power of those courts, where such diversity obtains, to adjudicate concerning rights against the estates of decedents. Whilst we shall consider these two subjects separately, to avoid repetition we shall first consecutively analyze the cases concerning both subjects.

In *Hook* v. *Payne*, (14 Wall. 253,) certain distributees of an estate over which an administrator had been appointed in a court of Missouri, alleging diversity of citizenship, filed their separate bills in a Circuit Court of the United States, for the purpose of annulling releases which they had given as to their distributive shares to the administrator, on the ground of his fraud, and also sought to annul settlements alleged to have been fraudulently made in the Probate Court, and to have a decree against the administrator for the amount of their distributive shares. The several suits were consolidated. The trial court, by an interlocutory decree, set aside the releases and the settlements made by Hook (the administrator) with the county court, and appointed a master to state an account with Hook as administrator. Moreover, the master was directed to inquire what other persons were interested in the estate, and to report what payments, if any, had been made to them, and what was due to them respectively at the date of the report. The report of the master not only accorded the relief claimed by the complainants, but restated the accounts of the administrator, and in effect reported a scheme of distribution of the estate. The report was approved by the trial court. In this court the decree, in so far as it concerned the rights of the complainants, was affirmed. In so far as it attempted to distribute the estate and to deal generally with the rights of persons, other than the complainants, the decree was reversed, the court saying (p. 255):

"We are of opinion, therefore, that all that part of the decree which attempts to settle the right of the parties, who were neither plaintiffs nor defendants in the original suit, must be reversed.

"We do not propose, in this case, to lay down any precise rule on the subject of adjusting administrator's accounts in the Federal courts, or how far certain persons, not made parties to the original suit, or incapable of being made parties by reason of their citizenship, may or may not come in before the master, on a general accounting, and protect their rights; nor do we intend to go into that question."

In *Broderick's Will*, (21 Wall. 503,) the case was this: A suit in equity was brought in the Circuit Court for the District of California by the alleged heirs at law of Broderick to set aside the probate of his will, to have the same declared a forgery, and to recover the assets of Broderick's estate, much of which consisted of real property. The defendants were the executors, and several hundred persons who were in possession of portions of the real estate, claiming ownership thereof as purchasers at sales made by the executors. The estate had been administered upon and distribution had been fully made before the institution of the suit. The first contention which the court disposed of was that a court of equity had no jurisdiction of the subject matter of the suit, the same being vested exclusively in the probate court of the city and county of San Francisco. In sustaining this objection the court, through Mr. Justice Bradley, said (p. 509):

"As to the first point, it is undoubtedly the general rule, established both in England and this country, that a court of equity will not entertain jurisdiction of a bill to set aside a will or the probate thereof. The case of *Kerrick* v. *Bransby*, decided by the House of Lords in 1727, is considered as having definitely settled the question. Whatever may have been the original ground of this rule (perhaps something in the peculiar constitution of the English courts) the most satisfactory ground for its continued prevalence is, that the constitution of a succession to a deceased person's estate partakes, in some degree, of the nature of a proceeding *in rem*, in which all persons in the world who have any interest are deemed parties, and are concluded as upon *res judicata* by the decision of the court having jurisdiction. The public interest requires that the estates of deceased persons, being deprived of a master, and subject to all manner of claims, should at once devolve to a new and competent ownership; and, consequently, that there should be some convenient jurisdiction and mode of proceeding by which this devolution may be effected with least chance of injustice and fraud; and that the result attained should be firm and perpetual. The courts invested with this jurisdiction should have ample powers both of process and investigation, and sufficient opportunity should be given to check and revise proceedings tainted with mistake, fraud, or illegality. These objects are generally accomplished by the constitution and powers which are given to the probate courts, and the modes provided for reviewing their proceedings. And one of the principal reasons assigned by the equity courts for not entertaining bills on questions of probate is, that the probate courts themselves have all the powers and machinery necessary to give full and adequate relief.

"In England after the acts of Parliament had authorized devises of real estate, the same position was assumed by courts of equity in regard to such devises; it being held that any fraud, illegality, or mistake affecting their validity could be fully investigated and redressed in the courts of common law, where also devises were recognizable."

After a full review of authorities, holding that a court of equity did not possess power to annul the probate of a will, and in concluding its opinion, referring to a statute of the State of California, the court observed (p. 519):

"The statute of 1862 has been referred to, which gives to the District Courts of California power to set aside a will obtained by fraud or undue influence, or a forged will, and any probate obtained by fraud, concealment, or perjury. Whilst it is true that alterations in the jurisdiction of the State courts cannot affect the equitable jurisdiction of the Circuit Courts of the United States, so long as the equitable rights themselves remain, yet an enlargement of equitable rights may be administered by the Circuit Courts, as well as by the courts of the State. And this is probably a case in which an enlargement of equitable rights is effected, although presented in the form of a remedial proceeding. Indeed, much of equitable jurisdiction consists of better and more effective remedies for attaining the rights of parties. But the statute referred to cannot affect this suit, inasmuch as the statute of limitations would still apply in full force, and would present a perfect bar to the suit."

In *Gaines* v. *Fuentes*, (92 U. S. 10,) the facts were these: A will of Daniel Clark had been probated in the Second District Court for the Parish of Orleans, State of Louisiana. Distribution of the estate had been completed, when certain parties brought an action in the court named to annul the alleged will and to recall the decree by which it was probated. The alleged daughter of Daniel Clark was made a party defendant, and it was averred that suits had been brought by her against the plaintiffs, in a Circuit Court of the United States, as heir at law of her father, to recover certain property alleged to belong to his estate, and that the existence of the decree of probate was an obstacle to the proper defence of those suits, and made it necessary to sue to annul the will and avoid the decree of probate. Application was made to remove the cause to the Circuit Court of the United States, which the State court refused, on the ground that the suit involved merely a probate matter, and was therefore not cognizable in the Federal court. From a final decree of the State court in favor of the plaintiffs the cause was brought to this court. It was decided that the State court erred in refusing to permit the removal. In the opening passage of the opinion the court pointed out that, whilst the suit was, in form, one to annul the alleged will of Daniel Clark and to recall the decree by which it was probated, it was in reality a suit brought against the devisee, and by strangers to the estate, to annul the will as a muniment of title, and to restrain the enforcement of the decree by which its validity had been established so far as it affected their property. The court observed:

"It is in fact an action between parties, and the question for determination is whether the Federal court can take jurisdiction of an action brought for the purpose mentioned between citizens of different States upon its removal from a State court."

The decision in the case of Broderick's will, concerning the want of power in a court of equity to probate a will or revoke its probate, was expressly approved. But, referring doubtless to the concluding passage in the opinion in that case, it was observed that if such equitable power was vested in the State courts the Federal courts sitting in the States where such statutes existed might exercise concurrent jurisdiction in a case between proper parties. Considering the want of authority of Federal courts, as such, over the probate of wills, it was declared (p. 21):

"There are, it is true, in several decisions of this court, expressions of opinion that the Federal courts have no probate jurisdiction, referring particularly to the establishment of wills; and such is undoubtedly the case under the existing legislation of Congress. The reason lies in the nature of the proceeding to probate a will as one *in rem*, which does not necessarily involve any controversy between parties; indeed, in the majority of instances, no such controversy exists. In its initiation all persons are cited to appear, whether of the State where the will is offered, or of other States. From its nature, and from the want of parties, or the fact that all the world are parties, the proceeding is not within the designation of cases at law or in equity between parties of different States, of which the Federal courts have concurrent jurisdiction with the State courts under the Judiciary Act; but whenever a controversy in a suit between such parties arises respecting the validity or construction of a will, or the enforcement of a decree admitting it to probate, there is no more reason why the Federal courts should not take jurisdiction of the case than there is that they should not take jurisdiction of any other controversy between the parties."

Having decided that the suit was in all essential particulars one *inter partes*, for equitable relief to cancel an instrument alleged to be void and to restrain the enforcement of a decree alleged to have been obtained by false and insufficient testimony, the court was brought to consider whether the law of Louisiana allowed such equitable relief, and said (p. 20):

"There are no separate equity courts in Louisiana, and suits for special relief of the nature here sought are not there designated suits of equity. But they are none the less essentially such suits; and if by the law obtaining in the State, customary or statutory, they can be maintained in a State court, whatever designation that court may bear, we think they may be maintained by original process in a Federal court, where the parties are, on the one side, citizens of Louisiana, and, on the other, citizens of other States."

In *Ellis* v. *Davis*, (109 U. S. 485,) the will of Mrs. Dorsey had been duly proved in a Probate Court of Louisiana, and the universal legatee named therein had been recognized and put in possession of the estate under the will. Some time after a bill was filed in the Circuit Court of

the United States against him for the two-fold purpose of setting aside the probate and annulling the will, on the ground that it had been made under undue influence, and for similar reasons, the annullment was prayed of a conveyance which had been made by the deceased to the universal legatee. An account of the rents and profits, &c., was also prayed. A demurrer to the bill was sustained and the case came to this court. It was decided that the court below had rightly sustained the demurrer. In the course of the opinion the court declared (p. 497):

"The original probate (of wills) of course is mere matter of State regulation, and depends entirely upon the local law; for it is that law which confers the power of making wills, and prescribes the conditions upon which alone they may take effect; and as, by the law in all the States, no instrument can be effective as a will until proved, no rights in relation to it, capable of being contested between parties, can arise until preliminary probate has first been made. Jurisdiction as to wills, and their probate as such, is neither included in nor excepted out of the grant of judicial power to the courts of the United States. So far as it is *ex parte* and merely administrative, it is not conferred, and cannot be exercised by them at all until, in a case at law or in equity, its exercise becomes necessary to settle a controversy over which a court of the United States may take cognizance by reason of the citizenship of the parties."

The court expressly reaffirmed the want of power in a Federal court of equity to set aside the probate of a will in the absence of a State statute giving the right in the courts of the State to such equitable relief, it being reiterated (p. 494:)

"It is well settled that no such jurisdiction belongs to the Circuit Courts of the United States as courts of equity: for courts of equity, as such, by virtue of their general authority to enforce equitable rights and remedies, do not administer relief in such cases. The question in this aspect was thoroughly considered and finally settled by the decision of this court in the case of *Broderick's Will*, (21 Wall. 503.)"

Coming to consider whether, by the customary or statute law of Louisiana, there existed power in the courts of that State, as a matter of equitable cognizance, to entertain a suit to annul a will and set aside its probate, it was decided that no such right existed, but that, on the contrary, the Louisiana law, whilst denying such right, afforded relief in an action at law, where the recovery of property was sought, by permitting the validity of a will and its probate, when asserted as a muniment of title, to be collaterally questioned. The court said (p. 499):

"It remains, therefore, in the present case to inquire whether the complainants are entitled, under the laws of Louisiana, to draw in question, in this mode and with a view to the decree sought, the validity of the will of Sarah Ann Dorsey and the integrity of its probate.

"An examination of the decisions of the Supreme Court of Louisiana on the subject will disclose that a distinction is made in reference to proceedings to annul a will and its probate, according to the objects to be ac-

complished by the judgment and the relation of the parties to the subject. If the administration of the succession is incomplete and *in fieri*, and the object is to alter or affect its course, the application must be made to the court of probates, which, in that case, has possession of the subject and exclusive jurisdiction over it. If, on the other hand, the succession has been closed, or has proceeded so far that the parties entitled under the will have been put in possession of their rights to the estate, then the resort of adverse claimants must be an action of revendication in the courts of general jurisdiction, in which the legal title is asserted as against the will claimed to be invalid, making an issue involving that question."

Following this statement the court made an exhaustive review of the decided cases in the State of Louisiana, establishing the proposition just previously quoted; and, as a necessary result of this conclusion, the court declared that in *Gaines* v. *Fuentes* it had been merely assumed that relief in the nature of an equitable remedy was allowed by the law of Louisiana, under which the probate of a will could be set aside, saying (p. 499, 503):

"In that case it was assumed, and not decided, that the said suit brought in the State court was one which, under the laws of the State, its courts were authorized to entertain for the purpose of granting the relief prayed for. The point decided was, that if it were it might properly be transferred to a court of the United States."

* * * * * *

"The case of *Gaines* v. *Fuentes*, (92 U. S. 10,) was such an action of nullity, but, as before remarked, the point decided in that case was not that it would lie, according to the law of Louisiana, but that if it would lie in the State court it was removable to the Circuit Court of the United States, because it presented a controversy wholly between citizens of different States."

In *Byers* v. *McAuley*, (149 U. S. 608,) it was decided that a Federal court cannot exercise original jurisdiction in respect to the administration of the estate of a decedent, and that it cannot, by entertaining jurisdiction of a suit against the administator, draw to itself the full possession of the estate, or the power of determining all claims against or to it. It was, however, decided that where the estate of a deceased person is ready for distribution, but no adjudication has been made as to the distributees, the Circuit Court can entertain jurisdiction in favor of citizens of other States to determine and award their shares in the estate. It is true that the bill filed in the case assailed the validity of the probate of a document which disposed, in favor of two corporations, of a house and lot in the city of Pittsburg. But the trial court gave effect to the document as a declaration of trust, and the controversy on that branch of the case was not pressed on the appeal.

Let us, then, first deduce the principles established by the foregoing authorities as to the power of a court of the United States over the probate or revocation of the probate of a will. An analysis of the cases, in our opinion, clearly establishes the following:

First. That, as the authority to make wills is derived from the State and the requirement of probate is but a regulation to make a will effective, matters of pure probate, in the strict sense of the words, are not within the jurisdiction of courts of the United States.

Second. That where a State law, statutory or customary, gives to the citizens of the State, in an action or suit *inter partes*, the right to question at law the probate of a will or to assail probate in a suit in equity the courts of the United States in administering the rights of citizens of other States or aliens will enforce such remedies.

The only dispute possible under these propositions may arise from a difference of opinion as to the true significance of the expression "action or suit *inter partes*," as employed in the second proposition. When that question is cleared up the propositions are so conclusively settled by the cases referred to that they are indisputable. Before coming to apply the propositions we must, therefore, accurately fix the meaning of the words action or suit *inter partes*.

The cited authorities establish that the words referred to must relate only to independent controversies *inter partes*, and not to mere controversies which may arise on an application to probate a will because the State law provides for notice, or to disputes concerning the setting aside of a probate, when the remedy to set aside afforded by the State law is a mere continuation of the probate proceeding, that is to say, merely a method of procedure ancillary to the original probate, allowed by the State law for the purpose of giving to the probate its ultimate and final effect. We say the words action or suit *inter partes* must have this significance, because unless that be their import it would follow that a State may not allow any question to be raised concerning the right to probate at the time of the application, or any such question thereafter to be made in an ancillary probate proceeding without depriving itself of its concededly exclusive authority over the probate of wills. This may be readily illustrated. Thus, if a State law provides for any form of notice on an application to probate a will and authorizes a contest before the admission of the writing to probate, then it would follow, if the words suit or action of *inter partes* embraces such a contest, the proof of wills, if contested by a citizen of another State or alien, would be cognizable in the courts of the United States and hence not under the exclusive control of the State probate court Again, if a State authorized a will to be proved in common form, that is, without notice, and allowed a supplementary probate proceeding by which the probate in common form could be contested, then, again, if such a contest be a suit *inter partes* it would also be of Federal cognizance.

Having fixed the meaning of the words action or suit *inter partes* we come to apply the propositions deduced from the decided cases, in order to test the question of the jurisdiction of the Circuit Court over the relief

prayed for in the bill, so far as relates to the annullment of the probate. This requires us to determine, whether by custom or by the statute law of the State of Washington, the courts of that State had the power of administering the relief prayed for on that subject in the bill by an independent suit as distinguished from the exercise of probate jurisdiction originally or merely ancillary. There is no pretense of any custom in the State of Washington beyond the scope of the authority conferred upon the courts of the State by the laws thereof. The question, therefore, reduces itself to a narrow compass, that is, what remedies do the laws of Washington create for the purpose of the probate of wills and the revocation of a probate, and are those remedies exclusively probate in their character or necessarily merely ancillary thereto, or do they confer upon the State courts general legal or equitable authority on the subject merely because of the existence of a controversy? That is to say, is a will contest under the laws of Washington an ordinary action or suit between parties or a special probate proceeding directly ancillary to or concerning the probate of the will?

By section 5 of article IV of the constitution of Washington it was provided that there should be in each of the organized counties of the State a superior court, and by section 6 of the same article original jurisdiction was conferred upon such court in equity cases and cases at law, and over specified crimes, &c., and it was vested with original jurisdiction "of all matters of probate." By such statute such courts, in the exercise of their jurisdiction over matters of probate, were authorized:

"1. To take proof of wills, and to grant letters testamentary and of administration. . . .

"2. To settle the estates of deceased persons, and the accounts of executors, administrators, and guardians,

"3. To allow or reject claims against the estates of the deceased persons as hereinafter provided.

* * * * * *

"5. To award process and cause to come before them all persons whom they may deem it necessary to summon, whether parties or witnesses or, who, as executors, administrators, or guardians, or otherwise, shall be intrusted with or in any way accountable for any property belonging to any minor, orphan, or person of unsound mind, or estate of any deceased person.

"6. To order and cause to be issued all writs which may be necessary to the exercise of their jurisdiction." (Ballinger's Annotated Codes and Statutes of Washington, sec. 6075.)

Applications for the probate of a will or for letters testamentary are required to be made to the judge of the Superior Court having jurisdiction, and he is authorized, in the case of ordinary wills, on the exhibition of the will, to receive the proof and grant a certificate of probate, or if such will be rejected to issue a certificate of rejection. (Id. secs. 861, 862, 6100.) Testimony given in support of a will is to be reduced to writing,

signed by the witnesses, and certified by the judge of the court and wills admitted to probate are required to be recorded. (Id. secs. 6105, 6106.)

After defining a nuncupative will, the statutes of Washington provide as follows:

"No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, be first committed to writing, and a citation issued to the widow or next of kin of the deceased, that they may contest the will if they think proper." (Id. sec. 4606.)

Proceedings to contest a will after admission to probate or to secure probate after a certificate of rejection are regulated by the following sections of the code:

"If any person interested in any will shall appear within any one year after the probate or rejection thereof, and by petition to the superior court having jurisdiction, contests the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issues shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representation, or for any other cause affecting the validity of such will." (Id. sec. 6110.)

"Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrator with the will annexed, and to all legatees named in the will residing in the State, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted." (Id. sec. 6111.)

"If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save as to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed." (Id. sec. 6112.)

"If, upon the trial of said issue, it shall be decided that the will is for any reason invalid, or that it is not sufficiently proved to have been the last will of the testator, the will and probate thereof shall be annulled and revoked." (Id. sec. 6114.)

These statutory provisions have been decided by the Supreme Court of Washington to apply as well to a contest of a nuncupative will as to one of an ordinary will. (*State ex rel. Stratton, Attorney General,* v. *Tallman, Judge,* 25 Wash. 295; 29 Wash. 317.)

We are of opinion that the sections in question authorize a proceeding for contest only before the court which has admitted the will to probate or rejected the application made for probate, and that the authority thus conferred concerning the contest is an essential part of the probate procedure created by the laws of Washington, and does not, therefore, cause a contest, when

filed, to become an ordinary suit between parties. This is plainly indicated by the fact that the proceeding provided by the statute concerns not only revocation of the probate of a will, but also the right to petition for the probate of a will where an application to probate it had been previously rejected. The context of the legislation in question also clearly establishes that the authorized proceeding is but supplementary to, and a continuation of, the original proceeding in probate. This is indicated both by the form of the petition which is required to be filed and the character of the proof which may be considered on that petition. That the statute does not contemplate a formal suit, but a mere summary and ancillary proceeding, is shown by the circumstance that the petitioner is merely required to state in his petition "his objections and exceptions to said will, or to the rejection thereof," and on the statement of these objections in the petition, without the formality of the technical pleadings customary in ordinary suits *inter partes*, the statute requires that specified issues be then made up for hearing. And, further, the terms of section 876 treat the contest as not an ordinary suit between parties, since it is made the duty of the court to revoke the probate if for any reason the will is invalid, or if "*it is not sufficiently proved* to have been the last will of the testator." Moreover, it is evident that the statute contemplates that the court, when acting on a contest filed under its provisions, is not confined to the exertion of powers which would properly be exerted in an ordinary suit *inter partes*, since the statute causes a decree in favor of the petitioner, revoking a will already admitted to probate, to inure not only to the benefit of the particular contestant, but to be operative as to the whole world. This follows from the provision of the statute saying that if the court finds in favor of the petitioner who sought the revocation of a probate "the will and the probate thereof shall be annulled and revoked."

It is insisted in argument that the Supreme Court of Washington has referred to a will contest under the statutes of that State as a suit or action, and from this the inference is deduced that the proceeding is one *inter partes*, in the broad sense of the term, and not a part of the probate proceedings. But we do not consider that the cases relied on do more than use the term suit or action as a convenient form of expression. The view taken by the Supreme Court of Washington as to the substantive nature of a will contest is illustrated by its opinion in *Hunt* v. *Phillips*, 34 Wash. , where the court, in opening its opinion, referred to the case before it as "a proceeding in contest of the will," &c.

But the opinion of the Supreme Court of Washington as to the nature of a will contest under the statute of Washington does not depend upon the mere inference deducible from the characterization which the court has given to that proceeding. In *Montrose* v. *Byrne*, (24 Wash. 288,) it was expressly held that the statutory proceeding to establish a will was

special in its character, so much so that in a contest concerning the same the parties were necessarily limited to the question of the execution or validity of the will and the right to admit the same to probate, and therefore issues concerning the construction of the will or the vesting of property thereunder could not be considered in a contest proceeding.

It follows that as the Circuit Court of the United States had no jurisdiction to admit a will to probate, or to entertain a pure probate proceeding, and as the remedy afforded by the laws of Washington to secure the probate or the revocation of the probate of a will were proceedings of a purely probate character, and not an action or suit *inter partes*, the Circuit Court of Appeals correctly decided that the Circuit Court, although there was diversity of citizenship, was without jurisdiction of the cause so far as the bill sought a declaration of the non-existence of a will and the consequent nullity of the probate.

It remains only to consider the bill under its other aspects. The contention that the State court in admitting the nuncupative will to probate violated the due process clause of the Fourteenth Amendment to the Constitution of the United States rests upon two propositions: (*a*) The law of the State, it is contended, required that proof of an alleged nuncupative will should be offered within six months after the speaking of the testamentary words, and that notice should issue to the next of kin as a prerequisite to the power to entertain the application for probate. As here it is said the proof established that the hearing as to probate was had without the notice required by the statute, therefore the admission to probate was a violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States. (*b*) As under the laws of Washington it is asserted real estate could not be devised by a nuncupative will, therefore, the contention is, the Probate Court had no jurisdiction over such real estate or the rents, issues and profits thereof, and hence an attempt by that court to exert authority over that character of property amounted to depriving the heirs at law of such property without due process of law, in violation of the Fourteenth Amendment.

We are of opinion that the proposition, resting upon the want of notice, did not furnish a basis for the jurisdiction of the Circuit Court. The contention rests upon the assumption that the failure to give the notice under the State law was so essentially a prerequisite to a hearing on the question of probate that a probate made without the notice was null and void, and could collaterally be so treated. *In State ex rel. Stratton, Attorney General,* v. *Tallman, Judge of the Superior Court,* (25 Wash. 295,) the contrary doctrine was expressly held. That case concerned a collateral controversy relating to the very estate here in question. The Attorney General had filed in the probate court a motion praying for the vacation of the order admitting the will to probate, and to set aside all the pro-

ceedings leading up to the probate of the will, upon the grounds that the court acquired no jurisdiction to hear any evidence in support of the will, because no citation was issued as required by law as the citation was issued on the day it bears date, and was immediately returned by the sheriff without making any effort to find any of the heirs of deceased or any person interested in the estate, and because the deceased never made or attempted to publish and declare the will. The probate court having refused to entertain the motion, for the reason that the State was not an interested party, original proceedings by mandamus were commenced in the Supreme Court of the State to compel the court to hear and decide the motion. The Supreme Court, however, refused the writ, on the ground that any appropriate proceeding to contest the probate was provided in the statutes, which gave a year in which to make the contest, and that, conceding the interest of the State, it nevertheless could not by a mere motion raise the question of the validity of the probate. But, let us concede, for the sake of the argument only, that under the Washington statutes the requirement of notice was essential to the preliminary probate, and if by its omission the parties were deprived of or lost their right to deny the existence of the will, or to question its probate, that the absence of the notice might afford substantial ground to contend that rights protected by the Constitution of the United States had been violated. These concessions, however, cannot control this case. As the theory of the bill was, and as undoubtedly it was also the law of Washington, that despite the mere preliminary admission to probate, there was full right to assail the existence of the will and its probate, which was not lost by the failure to give notice, it must follow that such omission did not deprive of the right to a hearing, which right was adequately conferred by the statute, wholly irrespective of whether the notice on the preliminary probate had or had not been given. Indeed, the contention made on this subject amounts to asserting that every State law which provides for a probate in common form is repugnant to the due process clause of the Constitution, even although under the State statutes full and adequate probate remedies are provided by which interested parties may subsequently, within a time fixed by law, be heard in the probate proceedings to question the existence of a will or its probate. When the result of the proposition is thus ascertained it becomes obvious that it is not only opposed to the theory upon which the bill was framed, but is so in conflict with the adjudications of this court, to which we have previously referred, that it is devoid of all foundation in reason to such an extent as to prevent it from affording a basis for the jurisdiction of the Circuit Court.

We think also the claim of the want of due process of law arising from the contention that in the State of Washington a nuncupative will does not pass title to real estate, and therefore a violation of the due process

clause of the Fourteenth Amendment would arise if the Probate Court acted upon the contrary assumption, was clearly devoid of all reasonable foundation. It is not denied that under the law of Washington, in cases of intestacy as well as of testacy, both real and personal property is taken into the control of and is administered by the Probate Court. And as it is obvious on the face of the bill that the averment referred to was wholly subordinate to the determination of the existence of the alleged nuncupative will and the validity of the probate thereof, a question over which the Circuit Court did not have jurisdiction, it results that the bill upon constitutional or other grounds, did not present a case warranting the court in passing upon the construction and effect of the will.

There was no error in the action of the Circuit Court of Appeals, *and its judgment is, therefore, affirmed.*

True copy.

Test:

Clerk Supreme Court, U. S.